

CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH

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

Dated: 6 FEB 1995

APPLICATION NO: 1716 of 1994.

APPLICANTS:- Mr. Channarayappa, Bangalore.

V/S.

RESPONDENTS:- The Senior Superintendent, RMS, Bangalore  
and another.

T.

1. Dr. M.S. Nagaraja,  
Advocate. No. 11,  
Second Floor,  
First Cross,  
Sujatha Complex,  
Gandhinagar,  
Bangalore-560009.
2. Sri. M. Vasudevarao,  
Addl. C.G.S.C.  
High Court Bldg,  
Bangalore-560001.

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 31-01-95.

Issued on  
6/2/95

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for DEPUTY REGISTRAR  
JUDICIAL BRANCHES.

CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH

O.A. NO.1716/94

TUESDAY THIS THE THIRTY FIRST DAY OF JANUARY 1995

Shri V. Ramakrishnan ... Member [A]

Shri A.N. Vujjanaradhya ... Member [J]

Channarayappa,  
S/o Sri Sannaramappa,  
Aged about 30 years,  
Sorting Assistant,  
C/o Head Record Office,  
Bangalore Sorting Division,  
Bangalore-560 026.

... Applicant

[By Advocate Dr. M.S. Nagaraja]

v.

1. Senior Superintendent,  
RSM, Bangalore Sorting Division,  
Department of Posts,  
Mysore Road,  
Bangalore-560 026.
2. Chief Post Master General,  
Karnataka Circle,  
Palace Road,  
Bangalore-560 001.

... Respondents

[By Advocate Shri M. Vasudeva Rao ...  
Addl. Standing Counsel for Central Govt.]

O R D E R

Shri A.N. Vujjanaradhya, Member [J]:


1. Aggrieved by the order of termination of his services as Sorting Assistant ['SA' for short] the applicant has made this application under Section 19 of the Administrative Tribunals Act, 1985.



The applicant had undergone job oriented pre-university Diploma examination ie., Vocational Course in Sericulture conducted by the State Government of Karnataka during 1986, as can be seen from the State-

ments of marks as at Annexures A-1 to A-3. Pursuant to the advertisement issued by the Respondent ['R' for short] No.1, the applicant had applied for the post of SA on 24.10.1990 and on selection as such in the Schedule Tribe ['ST' for short] category to which he belongs, came to be appointed as SA in the office of R-1 on 27.9.1992. Subsequently the applicant had appeared for confirmation examination and was declared successful by memo dated 16.6.1994 as at Annexure A-4. The applicant represented on the basis of memo dated 22.7.1994 as in Annexure A-5 that he was confirmed. However, after finding that the applicant had secured only 155 marks and not 175, as a mistake had crept in in the statement of marks Annexure A-1 as a consequence of which the applicant had secured only 63.43% as against 65.05%, R-1 had issued a notice of termination under Rule 5[1] of CCS [Temporary Service] Rules, 1965 ['Rules' for short] with effect from the date of expiry of one month from the date of such notice was served on him, as per Annexures A-6 and A-7 dated 4.10.1994. Challenging the same as illegal, arbitrary and that the respondents are estopped from taking such a recourse the applicant seeks to set aside the memos at Annexures A-6 and A-7 and for grant of consequential remedies.

3. We have heard Dr. M.S. Nagaraja, learned counsel for the applicant and Shri M. Vasudeva Rao, learned Standing Counsel for the respondents and perused the records made available by the respondents.




4. Dr.Nagaraja advanced two fold contention. Firstly that respondents who have acted on the statement of marks and have further acted on the basis of the result of the confirmation examination successfully passed by the applicant, were estopped from taking such a recourse to terminate his services and secondly that the applicant was not issued any notice calling for explanation and he was only issued notice of termination causing hardship and meting out injustice to him. Shri Rao, on the other hand, contended that the applicant having not been confirmed, was not entitled to any notice calling for his explanation, that the applicant who was guilty of interpolation in Annexure A-5 dated 22.7.1994 which was a calculated and deliberate attempt on his part, is not entitled to any notice. He, further contended that the applicant was issued notice of termination and that the termination is not open to challenge.

5. The applicant reported for duty as SA on 27.9.1992 for which he was duly selected in ST category. Thereafter confirmation examination was conducted and the applicant was shown successful in Memo dated 16.6.94 as in Annexure a-4, his name appears at S.No.1. But thereafter he was not issued any order of confirmation in pursuance of this result of his success in the examination. But the applicant has taken the copy of the confirmation order issued to one Sri Varadarajan, whose name appears at S.No.27 and it appears

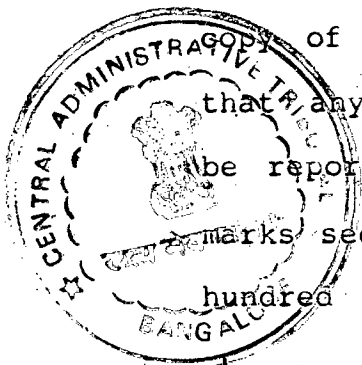


that he has deliberately and with ulterior motive had inserted his name and the date in ink in between serial numbers 29 and 30 where there was some space in the cyclostyled memo and had numbered it as 30. On that basis he averred in the application that he was duly confirmed and had obtained an interim order of stay. Actually the applicant was not so confirmed. Had he been confirmed and if at all his name was included in the list showing the names of persons confirmed, there would not have been continuous serial numbers in Annexure A-5. A perusal of the original records made available by the department makes it clear that though the name of the applicant Channarayappa was initially mentioned at S.No.30, the same was deleted before it was issued with the remark "be deleted for the present" which is in red ink. At the time of preparation of cyclostyled copy it looks tha name of the applicant was typed and the same was erased and thereafter the name of Shankarappa was shown at S.No.30. Thus it is clear that the applicant was never confirmed in the post to which he was appointed. But he had interpolated his name in Annexure A-5 and had misrepresented the fact and had been successful in obtaining an interim order. This is a deliberate and calculated attempt on the part of the applicant, as rightly contended by the learned Standing Counsel. We have also seen the relevant note which had driven the department to delete the name of the applicant from the list of persons who were shown as confirmed. A perusal of the note file would indicate that the



department had noticed some discrepancy about the correctness of the marks in the statement relating to the applicant who had appeared and obtained statement of marks as in Annexure A-1 from the State Council of Vocational Education. The applicant had undergone vocational course in Sericulture. The statement of marks as in Annexure A-1 relating to register No.72728 ie., the applicant indicates that in place of 155 marks obtained by the applicant, it is shown as 175 marks ie., 20 marks in excess. This mistake was not noticed by the department till the question of confirmation of the applicant in the post came up for consideration. The statement of marks mentions a note below which reads "any discrepancy noticed by the candidate must be reported immediately". But the applicant had not so reported the mistake that was quite apparent in the marks list. He is trying to take undue advantage of the same. Referring to this aspect of the matter, the department had a correspondence with the vocational educational officer ie., the State Council of Vocational Education of the Government of Karnataka. The Joint Director of that department has, by his letter dated 26.2.1994 addressed to R-1 informed thus. "Please see note 2 of the zerox


of the marks card wherein it is clearly given that any discrepancy noticed by the candidate must be reported immediately. As can be seen, the total marks secured by the candidate is actually 707 [seven hundred and seven]. Hence the original marks card



is sent, the total marks secured will be correct. The other contents of the zerox copy of the MC are correct as per the records maintained in the office."

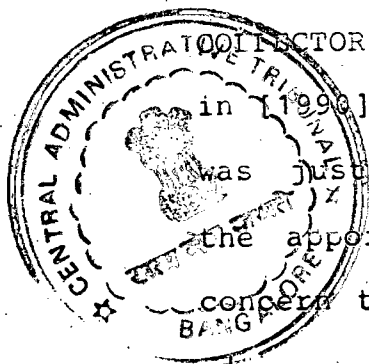
5. Even the department which had imparted education and conducted the examination squarely finds the applicant to be at fault. Anyhow, the fact remains that the applicant has successfully taken advantage of the mistake hitherto. If the difference of 20 marks were to be reduced from the marks secured by the applicant, the per centage of marks that he had secured in the confirmation examination comes to 63.42% and not 65.06%. There are two other candidates belonging to ST category namely R. Rajappa and N. Srikanta who had secured 64.66% and 64.50% and one of them who would have been selected in place of the applicant was denied of selection and appointment. Therefore, the department did rightly refuse to confirm the applicant in the post and have issued notice of termination.

6. Dr. Nagaraja relying on several decisions contended that the respondents who had made selection on the basis of the statement of marks made available by the applicant and who had successfully completed the confirmation examination also, are estopped from having recourse to Rule 5[1] of the rules. He further contended that the applicant had got married and has family to maintain and at this stage if he were to be thrown out even without calling for explanation



such an action would be arbitrary and illegal. According to Dr. Nagaraja the department ought to have verified the correctness or otherwise of the statement of marks or any other record made available by the applicant to the department immediately and they cannot at this distance of time have recourse to provisions of TS Rules. He hypothetically contended that it is not open to the respondents to terminate the service of the applicant at any time according to their whims.

7. The respondents have not slept over the matter for a very long duration so as to give a right to the applicant to agitate like this and at the appropriate point of time ie., while considering the confirmation they have verified the records and have found the mistake which was suppressed by the applicant. We are unable to believe that the applicant had not noticed the mistake in the statement of marks as in Annexure A-1 which is quite apparent by the addition of marks both vertically and horizontally. He has taken undue advantage of the mistake and had secured the job denying the same to other persons of his community who have in fact secured more marks. As rightly contended by the learned Standing Counsel it is the concern of the public and therefore as held in DISTRICT



COLLECTOR AND CHAIRMAN V. M.T. SUNDARI DEVI reported in [1990]4 SIR 237 wherein it was observed that action was justified because the matter not only between the appointing authority and the appointee but also concern the aggrieved viz. all those persons who were



similarly situated or even better qualified but could not be applied for they did not possess the requisite qualifications. We observe that this contention of the learned Standing Counsel merits consideration and acceptance. Because of the omission to correct the mistake on the part of the applicant, he had come in the way of selection and appointment of better qualified persons of the community as demonstrated earlier. Such a situation cannot be allowed to stand solely on the ground that the applicant had continuously worked for more than 2 years.

8. The contention of the learned counsel for the applicant that respondents are estopped from terminating his service at this distance of time is untenable. The reason is that they have taken appropriate action at the time of consideration of confirmation of the applicant to the post to which he was appointed. Had he been confirmed the position would have been different and perhaps the applicant would have had a better and stronger case. For the same reason the decisions from which the learned counsel for the applicant had sought support cannot be acceptable as having no bearing on the facts of the present case. Those cases concern either promotion or the employee who was confirmed.

In *JITEN KUMAR SWAIN V. UNION OF INDIA AND OTHERS* reported in [1987] 4 ATC 147, the promotion was cancelled without justifiable reason and the same was held to be illegal and the principle of estoppel had applied.

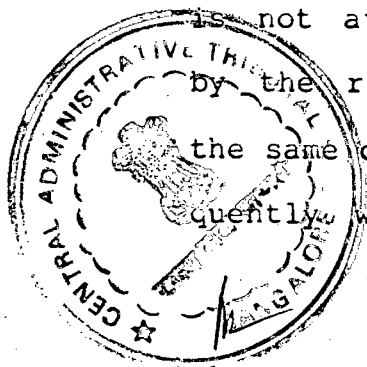
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Similar is the case of P. JOSEPH V. ADDITIONAL POST MASTER GENERAL, TAMIL NADU CIRCLE reported in [1990] 12 ATC 312.

In the case of KUIDIP KUMAR BAMANIA V. UNION OF INDIA AND OTHERS reported in [1991]16 ATC 360, a permanent employee was sought to be terminated on the ground of erroneous appointment and the same was observed as illegal and was barred by the principle of estoppel.


Both in the case of REETHA LONAPPAN V. JOINT CHIEF CONTROLLER OF IMPORTS AND EXPORTS, BOMBAY AND ANOTHER reported in [1993]23 ATC 471 and STATE OF MAHARASHTRA V. JAGANNATH ACHYUT KARANDIKAR reported in [1989]10 ATC 593, the position was that the employees therein were confirmed and, therefore, the observation that any action was barred by principle of estoppel.

As was observed earlier by us that in the present case the facts are entirely different and the question of confirmation of the applicant was for consideration and it was the appropriate point of time when the department had the opportunity to check up thoroughly and take suitable decision. The mistake being a fact is not at all in dispute. Proper action was taken by the respondents at the time of confirmation and the same cannot be sought to be highly belated. Consequently we are unable to accept the contention of



the learned Counsel for the applicant that the respondents were required to take action immediately and they should not have waited for two years to take such action. For the same reason we have to observe the next question raised as to when the department could take action in such matter of mistake implying that there will have to be some definite point of time at which they can take action will have to be stated as answered by our earlier discussion.

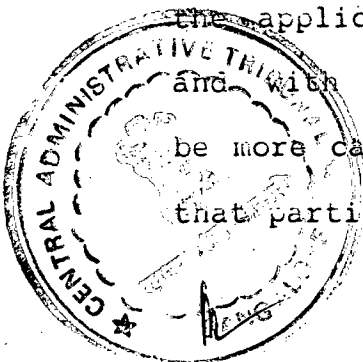
9. Dr. Nagaraja next contended that the applicant who had put in two years of service ought to have been given notice calling for his explanation and not a notice of termination with 30 days notice as in Annexures A-6 and A-7 under TS Rules. Because the applicant was not confirmed and his services were of temporary nature, the action taken by the department under Rule 5[1] of TS Rules is clearly in order and we uphold the same. There was no question of calling for explanation of the applicant because the department which had conducted the examination and issued marks list had itself confirmed about the mistake and the applicant had nothing more to say at that point. The applicant did not attempt to offer any explanation even before us. Therefore, it is clear that giving opportunity to the applicant to offer his explanation would have served very little purpose. By such action no prejudice is shown to have been caused to the appli-



cant. Consequently we are unable to uphold this contention of the applicant.

10. In view of what is discussed above the application lacks merit and the same will have to be dismissed. The interim order of stay also stands vacated. We had issued an interim order on 31.10.1994 keeping in view, inter alia, the pleading in the application where the applicant had contended that he had been confirmed in the post. On the basis of that interim order, the applicant would have worked for some period beyond 4th November, 1994 which is the date when the period of one month's notice as per order dated 4.10.1994 as at Annexure A-7 would have expired. If the applicant had actually worked for the period <sup>beyond</sup> ~~before~~ 4.11.1994 till date, he would be entitled to pay and allowances till the date of pronouncement of this order. This, however, will not detract from the validity of the order dated 4.10.1994 as at Annexure A-7 which we have upheld.

11. As regards costs we observed that had it not been for Dr. Nagaraja expressing, regret and making submission that it was not the intention of the applicant to mislead us, we would have imposed costs on the applicant. Taking a lenient view of the matter and with the expectation that the applicant would be more careful in future we deem it proper to observe that parties should bear their own costs.





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12. In the result the application fails and the same is hereby dismissed. No costs.

Sd-

ST/11/77  
MEMBER [J]

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MEMBER [A]

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*[Signature]*  
Section Officer  
Central Administrative Tribunal  
Bangalore Bench  
Bangalore