

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BANGALORE

81 Nov 86 February
DATED THIS THE NINTH DAY OF JANUARY, 1987

Present: Hon'ble Shri Ch.Ramakrishna Rao Member(J)

Hon'ble Shri P.Srinivasan Member(A)

APPLICATION No.1601/86(F)

Chandu Lal,
Additional Commissioner of Police,
Office of the Commissioner of Police,
No.1, Infantry Road,
Bangalore - 560 001. ...

APPLICANT

Vs.

1.Accountant General(A&E),
Karnataka,
Bangalore - 560 001. ...

RESPONDENT-1.

(Shri M.S.Padmarajaiah ... ADVOCATE)

2.Chief Secretary to Government of Karnataka, B'le. RESPONDENT-2.

This application has come up before the court today.

Shri P.Srinivasan, Member(A) made the following :

ORDER

In this application, the applicant, an officer of the Indian Police Service(IPS) working as Additional Commissioner of Police(ACP), Bangalore, complains that Respondent 1, the Accountant General(AG), Karnataka, has wrongly withheld his pay in the grade of Deputy Inspector General(DIG) Level I, to which he is entitled from 19.5.1984 till 20.5.1985.

2. The facts briefly are as follows:

3. The applicant was appointed as ACP, Bangalore, from 7.4.1983. The post of ACP is an ex-cadre post so far as the IPS in Karnataka is concerned. Before he was appointed as ACP he was holding the post of DIG of Police. At that time there was only one grade of DIG i.e., Rs.2000-2250. By notification dated 20.4.1983, the Government of India created

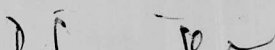
P. S. Srinivasan

posts of DIG level I in the grade of Rs.2250-2500. 50% of all posts of DIG in the ^{of} IPS cadre in Karnataka as on that date were converted into posts of DIG level I. The Government of Karnataka promoted him as DIG Level I, by order dated 4.3.1986 and the promotion was retrospective with effect from 19.5.1984. Under the Indian Police Service Pay Rules 1954 - Rule 9(1) thereof - where a member of the service is appointed to an ex-cadre post the State Government, in respect of posts under its control, has to make a declaration that the said post is equivalent in status and responsibilities to ~~one~~ of the cadre posts. When the applicant was appointed as ACP the State Government issued an order equating the post of ACP to that of DIG Level I. Again according to the IPS Rules a person can draw pay in any of the scales included in the cadre while working in an ex-cadre post only if the equivalence of the ex-cadre post to the particular cadre post is declared by the State Government. Since the equivalence in this case was declared by an order dated 4.3.1986 the applicant was allowed to draw pay in Level I of DIG from 4.3.1986 in the first instance. His contention was that since he was promoted to Level I from 19.5.1984 he should have been allowed to draw pay in Level I from that date. The difficulty in the way of allowing his claim was that the equivalence of the post of ACP with that of DIG Level I had not been passed on 19.5.84, such an order having been passed, as stated earlier, only on 4.3.1986. The instructions of the Government of India on the subject- Department of Personnel and Administrative Reforms No.1/9/72-AIS(II) dated 21.12.1973 - were that an order equating the ex-cadre post with a cadre post in respect

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of a member of an All India Service can operate only prospectively and cannot be made retrospective. If it was considered necessary to give a person working in an ex-cadre post the pay of a cadre post from a date earlier than the date on which equivalence had been ordered, the pay in the case had to be regulated under Rule 3 of the All India Services (Conditions of service - residuary matters) Rules, 1960 by the Central Government. Accordingly the Government of Karnataka made a reference to the Central Government to relax the requirement of an order declaring equivalence in the case of the applicant for the period from 19.5.1984 when he was working in an ex-cadre post so that he could be given the pay of DIG Level I from that date . It is stated that the matter is pending with the Ministry of Home Affairs, Government of India and till an order is passed by the Government of India thereon it would not be right to allow the applicant to draw pay as DIG Level I from 19.5.1984. 2)

4. Shri Chandu Lal the applicant himself argued the matter and contended that in the case of another officer Shri K.Srinivasan also a member of the IPS of Karnataka cadre, he had been allowed to draw pay as DIG Level I from the date of his promotion to that grade even though he was also similarly placed like the applicant - i.e., was working in an ex-cadre post at the time. He also contended that the State Government itself could declare the post of ACP equivalent to that of DIG Level I from 19.5.1984 and that they do not have to wait for the orders of Central Government. 7



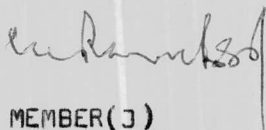
5. Shri M.S.Padmarajaiah, learned counsel for the respondent No.1, the AG, Karnataka and Shri S.V.Narasimhan, learned counsel appearing for Respondent No.2 (added with our permission during the pendency of the application) have strongly refuted the contentions of the applicant. The position of the rules as set out earlier in this order was explained by them. The post of ACP was not equated to that of DIG Level I from 19.5.1984. Therefore, without an order from the Government of India in pursuance of Rule 3 of the All India Services (condition of service residuary matters) Rules, 1960 , the applicant couldnot be allowed to draw pay as DIG Level I from 19.5.1984. Both of them pleaded that the final decision on the reference rests with the Ministry of Home Affairs, Government of India with whom the matter is now pending. The Ministry of Home Affairs not having been made a party to this application, this application, according to them, deserves to be rejected for non-joinder of necessary parties. However both of them explained that the State Government of Karnataka had already initiated steps to obtain permission of the Government of India to enable the applicant to draw pay as DIG Level I from 19.7.1984. The matter is under correspondence and some information sought for by the Government of India has also been supplied by the State Government. Therefore it is not as if the respondents have not taken any steps in the matter.

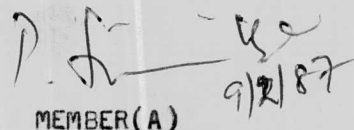
5. Having considered the rival contentions we feel that the application is somewhat premature in that it ^{is} has been made without waiting for the final order of the Government of India under Rule 3 of All India Services (Conditions of service residuary matters) Rules, 1960, referred to above.

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The applicant can have no real grievance against the two respondents out of whom at least the State Government of Karnataka is supporting him in his claim but cannot by itself pass an order giving him relief. As explained earlier, the order which can give him relief is to be passed only by the Ministry of Home Affairs, Government of India, which is not a party before us. We, therefore, feel that it would be proper to dispose of this application by directing the applicant to approach the Ministry of Home Affairs for passing early orders which will enable him to draw pay from 19.5.1984 as DIGI, Level I according to his claim. We hope that the Ministry of Home Affairs ~~will pass an order~~ ^{will} act ~~swiftly and not keep him waiting for long before his claim is settled.~~ ^{or} A copy of this order may also be sent to the Secretary, Ministry of Home Affairs, for information and necessary action.

6. The application is disposed of as indicated above. There will be no orders as to costs.


MEMBER(J)


MEMBER(A)

AN.