

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Commercial Complex(BDA)
Indiranagar
Bangalore - 560 038
Dated : 14-4-87

Application Nos. 126, 1537, 1605, 1606
1607 and 1626/86(F)

Applicant

Shri K. Devadass and 5 Ors

V/s

The Secy, Dept of Personnel, New Delhi
and 4 Ors

To

1. Shri K. Devadass
Upper Division Clerk
Circle II, Income-Tax Department
Unity Building Annexe
Mission Road
Bangalore - 560 027
2. Shri V. Gopala Rao
Upper Division Clerk
Office of the Chief Commissioner
(Admin) & Commissioner of Income Tax
Karnataka I
Bangalore
3. Shri G. Hanumantha Rao
Inspector of Central Excise
Central Revenue Buildings
Queens Road
Bangalore - 560 001
4. Shri A. Rama Prasad
Inspector of Central Excise
Office of the Collector of
Central Excise
Central Revenue Buildings
Queens Road
Bangalore - 560 001
5. Shri N.R. Mukundaraj
Upper Division Clerk
Income Tax Office
Nazarbad
Mysore
6. Shri S.R. Jayaprakash
Inspector of Central Excise
C/o Asst. Collector of Central Excise
Yeshwanthpur Division
Bangalore
7. Shri M. Narayanaswamy
Advocate
No. 844 (Upstairs)
Vth Block
Rajaji Nagar
Bangalore - 560 010
8. The Secretary
Department of Personnel
Cabinet Secretariat
North Block
New Delhi-110 001
9. The Director General of Health Services
Nirman Bhavan
New Delhi-110 011
10. The Director
National Tuberculosis Institute
No. 8, Bellary Road
Bangalore - 560 003
11. The Chief Commissioner (Admin)
& Commissioner of Income Tax
Karnataka I
Central Revenue Buildings
Queens Road
Bangalore - 560 001

12. The Collector of Central Excise
Central Revenue Building
Queens Road
Bangalore - 560 001
13. Shri M.S. Padmarajaiah
Senior Central Govt. Stng Counsel
High Court Buildings
Bangalore - 560 001

Subject : SENDING COPIES OF ORDER PASSED BY THE BENCH IN
APPLICATION NOS. 126, 1537, 1505, 1606, 1607 and 1626/86(F)

Please find enclosed herewith the copy of the Order passed by this
Tribunal in the above said Applications on 30-3-87.

Encl : As stated

B. V. Venkatesh Reddy
Deputy Registrar
(Judicial)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH BANGALORE

DATED THIS THE 30th MARCH 1987

Present : Hon'ble Sri Ch. Ramakrishna Rao - Member (J)
Hon'ble Sri L.H.A. Rego - Member (A)

APPLICATION Nos. 126, 1537, 1607, 1605, 1606
and 1626 of 1986

1. K Devadass (A.No. 126/86)
UDC, Circle I.T. Deptt
Unit Building Annexe, Mission Road
Bangalore 560027
2. V.Gopala Rao (A.No. 1537/86)
UDC, Office of the Chief Commissioner
MR (Admin) & Commissioner of Income Tax
Karnataka I, Bangalore
3. N.R. Mukundaraj (A.No. 1607/86)
UDC, Income Tax Office
Mysore
4. G.Hanumantha Rao (A.No.1605/86)
MR Inspector of Central Excise
Central Revenue Building
Queens Road, Bangalore 560 001
5. A.Rama Prasad (A.No. 1606/ 86)
Inspector of Central Excise
C/o Collector of Central Excise
Central Revenues Building
Queens Road, Bangalore 560 001
6. S.R. Jayaprakash (A.No. 1626/86)
Inspector of Central Excise
C/o Asst. Collector of Central Excise
Yeshwanthpur Division
Bangalore

- Applicants

(Sri M. Narayanaswamy, Advocate)

and

1. The Union of India represented by its
Secretary, Department of Personnel
Cabinet Secretariat, North Block
New Delhi
2. Director General of Health Services
Nirman Bhavan, New Delhi
3. The Director,
National Tuberculosis Institute
No.8, Bellary Road, Bangalore 3

} Common to
all applications

4. The Chief Commissioner (Admn) & (For A.Nos. 126, 1537
Commissioner of Income Tax and 1607 of 1986 only)
Karnataka I
Central Revenue Building
Queens Road, Bangalore 560001 -
4. The Collector of Central Excise, (For A.Nos. 1605, 1606
Central Revenue Building and 1626 of 1986 only.)
Queens Road, Bangalore 560 001

- Respondents


(Sri M.S.Padmarajaiah, Senior C.G.S.C.)

This application came up for hearing before this Tribunal and Hon'ble Sri Ch. Ramakrishna Rao, Member (J) to-day made the following

O R D E R

The relief claimed by the applicants in these six applications being the same, the applications are dealt with in a common order. The facts giving rise to these applications are briefly as follows. The applicants 1 to 6 were appointed as Upper Division Clerks ('UDCs') in the office of the National Tuberculosis Institute, Bangalore ('NTI') - R3 on 16.5.70, 16.10.1965, 9.8.1965, 20.9.1965, 9.3.1967 and 1.5.1967 respectively in the pay scale Rs.130-300. Though appointed as UDCs, they were discharging the duties which Field Investigators (FIs) in institutions like the National Sample Survey Organisation (NSSO) discharged, but were not given pay in the pay scale Rs.150-300 which NSSO was giving to FIs. Pursuant to the judgement rendered by the High Court of Karnataka (High Court) on 19.7.1974 the pay scales of the applicants was brought on ~~on~~ ~~par~~ ~~xx~~ from the date of their

at par
appointment/with the pay scale of FIs in NSSO i.e.
Rs.150-300. Thereafter the pay scales of FIs was
revised to Rs.180-320 with effect from 1.12.1972 by NSSO
but the corresponding increase in the pay scale was not
given to the applicants and the persons similarly placed
in the NTI. Some of the FIs in NTI moved the High Court
claiming parity with FIs in NSSO and their claim was
upheld in and by its judgement dated 29.1.1982. As a
sequel to this judgement a letter was issued by the
Ministry of Health & Family Welfare, New Delhi on
12.11.1982 to the Director General of Health Services ('R2')
(^{for short,}
(a/'the letter') conveying the sanction of the Government
to the revision of pay scales of FIs in NTI to Rs.180-320,
and ~~Rs.~~ Rs.380-640 with effect from 1.12.1972 and 1.1.73
respectively. The FIs of NTI who moved the High Court
were given the benefit of the revised pay scales but not
the applicants, who were declared as surplus staff in the
NTI and posted to other departments as UDCs as recommended
by the Central Surplus Cell, New Delhi. Aggrieved by the
refusal of NTI to pay the applicants the arrears for the
period 1.12.1972 upto the date they were declared surplus
the applicants have^{filed} ~~these~~ applications.



2. Shri M.S. Padmarajaiah, Senior C.G.S.C., appearing
for the respondents, at the outset, ^{objects} ~~submits~~ that the
applications have been filed belatedly and are hit by
laches and on this ground they should be rejected
in limine.

3. Shri M.Narayanaswamy, learned counsel for the applicants, submits that his clients were claiming the benefit embodied in 'the letter' by addressing the NTI even as early as 25.11.1982; that his clients have been corresponding since then till 8.11.1984; that notice was issued by the counsel for the applicants to R2 on 22.7.1985 ~~xxxx~~ ^{stating} that appropriate legal action would be taken for redressal of their grievance if no relief ~~is~~ ^{was} granted within a week from the date of receipt of the notice; that soon after the establishment of the Central Administrative Tribunal ('Tribunal') his clients ~~had~~ filed these applications and as they ~~clients~~ have not kept quiet ever since the ~~date of~~ issue of 'the letter', the objection raised on behalf of the respondents is baseless.

4. We have given careful thought to the objections raised on behalf of the respondents and the explanation given by the counsel for the applicants. We are satisfied that ~~the~~ the applications are not hit by laches since the applicants have been diligently pursuing their claims with the authorities. The issue of a legal notice appears to us to be very significant. Further, the period of three years from the date of issue of 'the letter' expired only on 12.11.1985 i.e. after the Tribunal was established on 1.11.1985. We, therefore, hold that the objection raised on behalf of the respondents is devoid of substance and overrule the same.

....5



4/

5. Sri Narayanaswamy contends that the respondents erred in restricting the benefits of 'the letter' only to the individuals who filed the writ petitions in the High Court and got relief though there is nothing in 'the letter' to justify the denial of the benefit to others similarly situated as the writ petitioners. According to Shri Narayanaswamy the denial of the benefit of the revised pay scales to the applicants has resulted in discriminatory treatment being meted out to ~~the applicants and~~ his clients, who are therefore entitled to the benefit of the revised scales embodied in 'the letter'.

6. Sri Padmarajaiah, on the other hand, submits that the ~~benefit~~ relief granted by the High Court as embodied in 'the letter' is applicable only to those petitioners, who filed the writ petitions and others, ~~who are~~ not parties to the judgement of the High Court, are not entitled to claim the benefit of the judgement.

7. This leads us to the question whether the judgement dated 29.1.1982 of the High Court is a judgement in rem applicable to all persons similarly situated as the writ petitioners or whether it is a judgement in personam applicable only to the writ ^{ti}petitioners. The history of judgement in rem was discussed by Holloway, J in Yarakalamma v. Anakala, 2 Madras H.C. 276 wherein the matter was ~~been~~ summed up thus :

"The result seems to be that the rule which makes a judgement conclusive only against the parties and those who claim under them is subject to certain exceptions which are the offspring of positive law, and the reasons for the exception may be generally stated to be both in English and Roman law, that the nature of proceedings, by which there is artificial, though generally not unjust extension of parties, renders it proper to use the judgement against those not formally parties."
(emphasis supplied)

CS

Following this decision in Kanhyalal v. Radhacharan 7 W.R.

338, Sir Barnes Peacock C.J. observes :

"A judgement in rem is an adjudication pronounced, as its name indeed denotes, upon the status of some particular subject-matter, by a tribunal having competent authority for that purpose.

8. What, then, is the connotation of 'status' ? The meaning of 'status', as given in Chamber's Twentieth Century Dictionary (CTCD: 1972 Edition), is :

position, rank, importance in society or in any group.

The meaning of 'rank' as given in CTCD is:

order, grade or degree:
to have a place in a rank, grade, scale or class.

Thus, the scale of pay of FIs is an important attribute of their status and the subject-matter of the judgement of the High Court, on which the letter was based, related to the scale of pay, to which the writ petitioners, who were working as FIs, like the applicants, were entitled.

9. We, therefore, consider the judgement in the present case as a judgement in rem. 'The letter' in fact, makes no mention of the writ petitioners but only of the judgement of the High Court and revision of pay scales of the post of FIs in NTI based thereon. The letter goes on to say:

"Consequent on the revision of the scale of pay, the pay of the incumbents to the posts of Field Investigators should be fixed according to the Rules and they may be allowed to draw arrears of pay, if any, from 1.12.1972 and 1.1.1973."

From the words underlined, it is amply clear that the intention of the Government was to accord the benefit of the revised pay scales to all the incumbents of the posts of FIs without restricting the benefit to the writ petitioners.

Such a restriction would have resulted in discrimination between those who approached the High Court and others who were similarly situated, thereby violating Art 14 ^{ent} of the Constitution. With ^{this} awareness 'the letter' has been issued as is apparent from its language and tenor.

10. We, therefore, hold that the applicants are entitled to the benefit of the revised pay scales as prescribed ^{ent} in 'the letter' and direct respondents 2 and 3 to accord the applicants the benefit of the revised pay scale of Rs.180-320 and Rs.380-640 with effect from 1.12.1972 and 1.1.1973 respectively with all consequential benefits, including the difference of pay, upto 1.3.1977. We also direct respondents 4 and 5 to re-fix the pay the applicants with effect from 1.3.1977 taking into account the last pay drawn as re-fixed in accordance with the above direction and grant all consequential benefits, including the difference in pay from 1.3.1977.

11. In the result the applications are allowed. No order as to costs.

Sd _____

Member (J)

Sd _____

Member (A) 30-3-87

True Copy!

B.V. Venkatesh Reddy
DEPUTY REGISTRAR
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE