

REGISTERED

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Commercial Complex(BDA)
Indiranagar
Bangalore - 560 038

Dated : 15 APR 1988

CONTEMPT OF COURT APPLICATION NO
IN APPLICATION NO. 136/86(T)
W.P. NO.

43

/87

Applicant

Dr B. Rangaswamy
To

V/s

Respondent

The Secy, M/o Health & Family Welfare,
New Delhi & 2 Ors

1. Dr B. Rangaswamy
Medical Officer
Central Government Health Scheme(CGHS)
80 Feet Road
Rajajinagar
Bangalore - 560 010
2. Shri K.N. Chendra Shekhar
Advocate
Reddy Buildings
35/1, 1st Main Road
Gandhinagar
Bangalore - 560 009
3. The Secretary
Ministry of Health & Family Welfare
Nirman Bhavan
New Delhi - 110 011

4. The Chief Medical Officer
Central Govt. Health Scheme(CGHS)
1-7-115, Bakaram
Hyderabad (A.P.)
5. The Deputy Director Administration(V&C)
Central Govt. Health Scheme - I
Directorate General of Health Services
Nirman Bhavan
New Delhi - 110 011
6. Shri M. Vasudeva Rao
Central Govt. Stng Counsel
High Court Building
Bangalore - 560 001

Subject : SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith the copy of ORDER ~~BY~~ ~~INTERIM ORDER~~
passed by this Tribunal in the above said Contempt of Court application on 5-4-88.


DEPUTY REGISTRAR
(JUDICIAL)

Encl : As above

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE

DATED THIS THE 5TH DAY OF APRIL, 1988

Present: } Hon'ble Shri Justice K.S. Puttaswamy, Vice-Chairman
 } and
 } Hon'ble Shri P. Srinivasan, Member (A)

CONTEMPT OF COURT APPLICATION NO. 43/1987

Dr. B. Rangaswamy,
Aged 34 years,
Medical Officer,
Central Government
Health Scheme,
80 Feet Road,
Rajajinagar,
Bangalore.

.... Petitioner.

(Shri K.N. Chandrashekar, Advocate)

v.

1. The Secretary to Govt. of India,
Ministry of Health & Family Welfare,
'Nirman Bhavan',
New Delhi.
2. Chief Medical Officer,
Central Government Health Scheme,
1-7-115, Bakaram,
Hyderabad.
3. Deputy Director,
Administration (V and C),
Central Government Health Scheme,
Directorate-General of Health
Services, 'Nirman Bhavan',
New Delhi.

.... Contemnors.

(Shri M. Vasudeva Rao, C.G.A.S.C.)

This application having come up for hearing to-day,
Vice-Chairman made the following:

ORDER

In this application made under Section 17 of the Administrative Tribunals Act, 1985 ('AT Act') and the Contempt of Courts Act of 1971 (the CC Act) the petitioner had moved us to punish the contemnors for non-implementation of an order made in his favour by this Tribunal on 23.9.1986 in Application No.136/86 (Annexure-A).

2. In Application No.136/86, which was a transferred application received from the High Court of Karnataka, the petitioner had challenged his termination as Junior Grade Medical Officer of the Central Government Health Scheme (MO). When that application came up for hearing before this Tribunal, the respondents therein who are the contemnors before us, filed a written memo on 23.9.86 inter-alia undertaking to reinstate the petitioner and that memo which is material reads thus:

"That the Respondents are willing to take back the applicant in service after sanctioning leave without pay from 1.3.1983 till date. This is submitted as per the telegraphic message issued by the Under Secretary to the Ministry of Health and Family Welfare, New Delhi, in connection with the above case. A copy of the said telegram is enclosed herewith. The order may be passed accordingly."

On a consideration of this memo and the submissions made thereto by both sides, a Division Bench of this Tribunal consisting of Hon'ble Shri L.H.A. Rego, AM and Hon'ble Shri Ch. Ramakrishna Rao, JM, made an order on 23.9.1986 in these terms:-

"(1) the pay of the applicant at the time of reinstatement and his seniority shall be fixed deeming him to have been in service during the period referred to in the memo; and

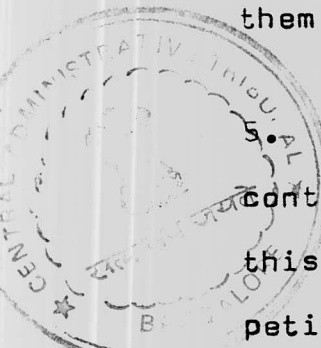


- (2) the period referred to in the memo shall not be treated as 'dies non' for purposes of pensionary benefits accruing to the applicant."

In pursuance of this order, the petitioner had been reinstated to service from 28.1.1987 and he has been working ever since then at the place to which he has been posted. On this aspect the petitioner has no grievance.

3. But the petitioner complains that the contemnors, in not refixing his pay as on 28.1.1987 and restoring him the seniority have flouted the order made in his favour and have committed contempt of this Tribunal under the CC Act.

4. In their reply, the contemnors have claimed that the order made on 26.10.1987 by the competent officer, fully complies with the order made by this Tribunal and the Contemnors were not guilty of this Tribunal to justify any action against them under the CC Act.



5. Sri K.N. Chandrasekhar, learned Counsel for the petitioner contends that in terms of para (1) of the directions made by this Tribunal, the contemnors were bound to fix the pay of the petitioner as on 18.1.1987 allowing all increments and the benefit of general revision of pay scales from 1.1.1986; restore to him his seniority, extending all such benefits that flow from the same from time to time and in not doing so, they have wilfully flouted the orders of this Tribunal and are guilty of contempt of this Tribunal under the CC Act.

6. Sri M. Vasudeva Rao, learned Counsel for the contemnors contends that the contemnors had complied with the orders made

by this Tribunal in letter and spirit and that in any event the order made by the competent officer on 26.10.1987 was in full compliance of the order made by this Tribunal.

7. We have earlier set out the relevant parts of the order made by this Tribunal.

8. In pursuance of the order made by this Tribunal, the applicant had been reinstated to service from 28.1.1987 and that date must now be taken as the date of reinstatement of the petitioner. With this it is necessary to read the order made by the competent officer on 26.10.1987 to decide the contentions between the parties. The same reads thus:

"Subject: CGHS Bangalore - Request for fixation of salary and seniority etc,
Dr. B. Rangaswamy.

...

Sir,

With reference to your letter No.A.19019/MD_SR/97/BNG/CGHS/2557 dated the 14th April 1987 on the subject mentioned above, I am directed to say that on reinstatement of Dr. B. Rangaswamy, he will be entitled to the pay at the rate he was drawing prior to 1.3.1983 as per directions of the Tribunal under the normal rules. However, the period from 1.3.1983 to 27.1.1987 will be treated as leave without pay.

2. As regards the request of Dr. Rangaswamy for fixation of seniority in the Medical Officers Grade and treatment of period of unauthorised absence from 1.3.1983 to 27.1.1987, it may be clarified that his seniority in the Medical Officers Grade will not be disturbed and the above period will not be treated as 'dies non' for the purpose of pensionary benefits accruing to Dr. Rangaswamy in respect of the services rendered by him prior to 1.3.1983. Necessary orders sanctioning leave without pay for the above period i.e., 1.3.1983 to 27.1.1987 have been issued separately vide our letter No.C. 14011/9/83-CGS II(I) dated 26th October, 1987.



3. As regards representation dated 16th March 1987 received with your above mentioned letter for placement in the Senior Scale of Medical Officers Grade, the case was placed before the D.P.C. in September 1987 and the DPC recommended that the case of Dr. B. Rangaswamy may be reviewed on receipt of A.C.R. for the year 1987.

4. Dr. Rangaswamy may kindly be informed of the above position also.

Yours faithfully,

Sd:
(RAVI DATT)

Under Secretary "

In para 2 of the order, the authority had declared that the seniority of the petitioner as on 1.3.1983 had not been disturbed or had been restored.

9. We are of the view that the declaration made on the seniority constitutes full compliance of the direction made by this Tribunal on the seniority of the petitioner. If that is so, then we cannot proceed against the contemnors on the relief granted to the petitioner on his seniority.

10. What all other consequences flow from restoration of seniority of the petitioner are not matters that fall within the purview of these contempt proceedings. If the petitioner has any grievances on any of them, he has to work out them in separate proceedings. We, therefore, leave the same open.

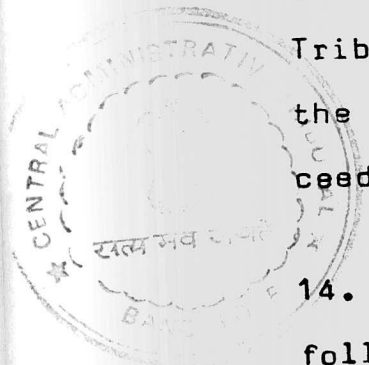
11. On the fixation of pay of the petitioner as on ~~28.3.1987~~ ²⁸⁻¹⁻¹⁹⁸⁷ the contemnors, had taken the view that the pay he was drawing as on 1.3.1983, should itself be the basis and the same complies with the directions of this Tribunal. In other words, the

contemnors are of the view that the pay of the petitioner as on 1.3.1983 should also be the pay to be fixed as on 28.1.1987.

12. We are of the view that what has been done by the contemnors on the fixation of pay of the petitioner is not in consonance with the directions of this Tribunal. What was drawn as on 1.3.1983 cannot itself be the fixation of pay as on 28.1.1987. If that is so, then it will be no fixation as on 28.1.1987 at all.

13. When the pay of the petitioner as on 28.1.1987 had to be fixed, it necessarily means that the benefit of all increments and revision of pay scales should be made available to him and on that basis his pay as on 28.1.1987 should be notionally fixed. The effect of treating the period from 1.3.1983 to 28.1.1987 as dies non is that the petitioner will not be entitled to any financial benefits during the said period. We are of the view that this is ~~the~~ a real import and purport of the order of this Tribunal. From this it follows that what had been done by the contemnors is erroneous. But this does not necessarily mean that the contemnors had deliberately flouted the order of this Tribunal and they are guilty of contempt of this Tribunal. We are satisfied that they have bonofide formed the erroneous views. We should therefore drop these proceedings with appropriate directions.

14. In the light of our above discussion, we made the following orders and directions.



(1) We drop these contempt of court proceedings against the contemnors;

(2) We direct the contemnors to re-fix pay of the petitioner as on 28.1.1987 allowing him all such increments as he was entitled to subject to his crossing efficiency at the appropriate level and the benefit of general revision of pay scales granted to all civil servants of the Union from 1.1.1986 with all such expedition as is possible in the circumstances of the case and in any case within a period of three months from the date of receipt of this order.

15. Application is disposed of in the above terms. But in the circumstances of the case, we direct the parties to bear their own costs.



Kms/Mrv.

Sd/-
VICE-CHAIRMAN

TRUE COPY

Sd/-
MEMBER (A)

[Signature]
DEPUTY REGISTRAR (JDL)
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

U.P.C

Most Immediate

Commercial Complex (BDA),
Indiranagar,
Bangalore - 560 038

Application No. 136/86 (T).

Dated the 26th Sept, 86.

To W.P. 12936/85

1. Sri. H. Subramanya Gowd, Advocate for Applicant
No. 150/36. National High School Road. Vishveshwara-
param Bangalore-4.
2. Sri. M. Vasudeva Rao, Central Govt Standing Counsel
High Court Building Bangalore-1
3. Secretary, Ministry of Health and Family Welfare
Norman Bhawan New Delhi-110011.
4. Chief Medical Officer 2, C.G.H.S. NO 1-7-115 Bakaram
Hyderabad - 500008

Subject: SENDING COPIES OF ORDER PASSED BY THE BENCH
IN APPLICATION NO. 136/86 (T)

Please find enclosed herewith the copy of the Order/Interim Order
passed by this Tribunal in the above said Application on 23rd Sept 86

No. 5.2 21/9
Smt. S. R. Srinivasan today.
R.

R. Srinivasan
SECTION OFFICER
(Judicial)

Encl: As above.

- 5) The ~~By~~ Deputy Director Administration (V & C)
C.G.H.S.-I, Directorate General of Health
Services, Norman Bhawan New Delhi-110011.
6. Dr. B. Rangaswamy Medical Officer, C.G.H.S. Hyderabad,
Presently studying M.S (Gen. Surgery) in K.M.C. Hubli.

21/9
S. Srinivasan
29/9

23.9.86

A. No. 136/86 (T)
(WP. No. 12936/85)

After hearing the matter at length, Shri M. Vasudeva Rao, counsel for the respondents, filed a memo on behalf of the respondents stating that they are willing to take back the applicant into service treating the period from 1.3.1983 upto the date of reinstatement as leave without pay. Counsel has also filed a telegram received from the 1st respondent in support of the contents of the memo. In view of this, we do not consider it necessary to go into the merits of the case, and therefore direct the respondents to reinstate the applicant into service accordingly.

Taking all the facts and circumstances into account, we consider that the ends of justice would be met if the following conditions are imposed:

(1) the pay of the applicant at the time of reinstatement and his seniority shall be fixed deeming him to have been in service during the period referred to in the memo; and

(2) the period referred to in the memo shall not be treated as 'dies non' for purposes of pensionary benefits accruing to the applicant.

The applicant shall report for duty within a fortnight from today. Application is disposed of accordingly.

(L.H.A. REGO)
Member (AM)
23.9.1986.

(CH. RAMAKRISHNARAO)
Member (JM)
23.9.1986.

dms

(True copy)

R. H. 26/9/86
SECTION OFFICER
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE

