

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BANGALORE

DATED THIS THE 19TH DAY OF FEBRUARY, 1987.

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

APPLICATION NO.1480/86

Sri. C.S. Sreenivasan,
Aged about 59 years,
Son of Sri C.K. Sundarachar,
Residing at No.320, 14th Main,
R.M.V. Layout, Sadashivanagar,
Bangalore-80.

.... Applicant

(Dr. M.S. Nagaraja, Advocate)

v.,

1. The Secretary,
Central Electricity Authority,
Government of India, Sewa Bhavan,
New Delhi-66.

2. The Secretary,
Government of India,
Ministry of Energy,
Shramshakthi Bhavan,
New Delhi-1.

.... Respondents.

(Shri D.V. Shailendra Kumar, CGSC)

This application having come up for hearing
to-day, Shri P. Srinivasan, Hon'ble Member (A),
made the following.

O R D E R

This is a transferred application received from
the High Court of Karnataka.

2. The applicant, who was a member of the Central
Power Engineering Service, was promoted as Chief

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Engineer ('CE'), (Hydel Construction Monitoring) ('HCM'), in the Central Electricity Authority ('CEA') on deputation basis w.e.f. 22.10.1980 'until further orders'. Prior to that he was a Director. By an order dated 30.10.1980 (Annexure-A) issued by the Department of Power of the Government of India, he continued in that post on an ad-hoc basis. Again, by an order dated 2.2.1982 passed by the Department of Power (Annexure-C to the reply filed on behalf of the respondents), the applicant's appointment as CE (HCM) was extended 'upto 31.3.1982 or till the regular appointment is made, whichever is earlier'. In terms of this last mentioned order, a regular appointment was made to the said post of CE (HCM) by an order dated 11.2.1982 of the CEA of a certain Shri N.L. Khanna. Shri N.L. Khanna was appointed with the approval of the Public Service Commission ('PSC') and the Appointments Committee of the Cabinet ('ACC'). By the same order, the applicant was posted in the Hydel Designs w.e.f. 10.2.1982, the order not specifying the post assigned to him. According to the applicant, the post was that of CE. But the respondents dispute this. Sometime in February, 1982, the Chairman of the CEA proposed to the Department of Power that the applicant be allowed to function in the post of CE (Hydel Designs) in anticipation of the approval of the Ministry. This proposal became necessary because of the appointment

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of Shri Khanna as CE (HCM). The Ministry did not forward this proposal to the ACC, but informed the Chairman that such a proposal would not be countenanced by the ACC as it would amount to facing them with a fait accompli. However, it appears that the applicant was allowed to draw salary in the scale of CE, which was 2250-2500 till 26.6.1982, when on the recommendations of the DPC, he was regularly appointed as CE in that scale. Thereafter, w.e.f. 28.6.1982, the applicant went on deputation to another post, a fact with which we are not concerned. He superannuated from service on 30.6.1982. When the question of his pension came up, the authorities concerned took the view that between 10.2.1982 and 25.6.1982, he had wrongly been allowed to draw salary in the scale of CE, because his appointment to that post had not been approved by the ACC, and under the rules of business of the Government, such a sanction was necessary. Therefore, the excess salary said to have been paid to him during this period over and above the salary that should have been paid to him in his substantive post as Director in the scale of Rs.1500-2000 was recovered from his DCRG and for the purpose of calculating his pension, his pay during this period was only taken at the figure which he would have drawn as Director and not as CE. The applicant is

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aggrieved with this decision affecting his pension and involving recovery of excess payments from his gratuity.

3. Dr. M.S. Nagaraja, learned counsel for the applicant, strongly contended that the action of the respondents in proceeding on the view that the applicant was not legally appointed as CE during the period from 10.2.1982 to 25.6.1982 and the consequences that followed upon that view were illegal. The applicant was not served with any order of reversion from the post of CE w.e.f. 10.2.1982. On the other hand, the only order that was passed, which was dated 11.2.1982, was to the effect that the applicant was posted to Hydel Designs. The only inference that could be drawn from that order was that he was transferred in the same status of CE and not in a lower status. The applicant was under the bonafide impression that he was continuing as CE and actually carried on the duties of CE in the Hydel Designs Directorate and was rightly paid the salary of CE. The respondents could not, after his retirement take a view that the applicant was only in the grade of Director i.e., 1500-2000 during this period and to order recovery of excess payments and also to determine his pension on that basis. This was an unfair and inequitable action, which we should reverse.

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4. Shri D.V. Shailendra Kumar, learned counsel for the respondents, resisted the contentions of Dr. Nagaraja. He pointed out that appointments of Government servants to posts at different levels were governed by well-known Rules of Business and every government servant was bound by these rules. The post of CE carrying a pay scale of Rs.2250-2500 could not be filled up without the approval of the ACC. The applicant had been appointed as CE by Order dated 30.10.1980 on an officiating basis and until further orders. The subsequent order dated 2.2.1982 also made it clear that the appointment of the applicant as CE was continued as an ad-hoc arrangement upto 31.3.1982 or till the regular appointment was made, whichever is earlier. By virtue of this order, the moment a regular appointment was made to the post, the applicant's appointment automatically ceased, and that ^{is} ~~has~~ what happened on 10.2.1982 when the regular appointee, Shri N.L. Khanna, was posted as CE (HCM). By the same order, the applicant stood reverted to his substantive post of Director in the grade of Rs.1500-2000. The Chairman, CEA, who ~~was~~ sympathetic to the applicant, no doubt, wanted to continue him in the same scale in another Directorate, viz., the Hydel Designs. But his proposal did not go through. The Chairman was not the authority to make the appointment, since it

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had to be approved by the ACC. The applicant was regularly appointed in the scale of CE only from 26.6.1982 after selection by the DPC. Therefore, between 10.2.1982 to 25.6.1982, the applicant was not validly appointed as CE, and pay drawn by him in the scale of CE was irregular. That is why the excess payments made to him on this account were withdrawn from his gratuity and for the purpose of pension, only his pay in the scale of Director during this period was taken into account. There was no legal infirmity in this action, Shri Shailendra-Kumar contended, and therefore this application deserved to be dismissed.

5. We have considered the rival contentions very carefully. Though on the face of it, this appears to be a hard case, we are not in a position to help the applicant. There is no doubt that the Rules of Business of Government for appointment to various posts are binding on every government servant. Therefore, if a post in the scale of Rs.2250-2500 is filled up without the approval of ACC, the appointment cannot be held to be valid. In this case, the very order of appointment of the applicant as CE, particularly the one dated 2.2.1982, made it abundantly clear that the appointment would last only till a regular appointment is made. Therefore, when a regular appointee was selected, the applicant's

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regard, can do so retrospectively. We hope that necessary action will be taken to obtain the approval required under the Rules of Business for the appointment of the applicant as CE for the small period of about 4 months between 10.2.1982 and 25.6.1982, with the consequential effects flowing therefrom. We commend this step strongly, in view of the circumstances of this case.

7. The application is dismissed, subject to the observations made above. Parties will bear their own costs.

Mr. Pillai
Vice-Chairman 10/2/87

P. S. K
Member (A) 19/2/87

dms/Mrv.