

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BANGALORE

DATED THIS THE 20TH DAY OF JANUARY 1987

Present : Hon'ble Shri Justice K.S. Puttaswamy
Vice-Chairman
Hon'ble Shri L.H.A. Rego, Member (A)

APPLICATION NO. 672/86

M.V. Narayanaswamy,
S/o. Venkataraman,
aged about 57 years,
Assistant Controller of Defence Accounts,
S.C. Pune,

Applicant

(Shri M. Narayanaswamy, Advocate)

V.,

1. Union of India by its Secretary,
Ministry of Finance, North Block,
Central Secretariat, New Delhi.
2. The Financial Adviser,
Defence Services,
Ministry of Finance,
Defence Division,
South Block, Central Secretariat,
New Delhi.
3. Controller General of Defence Accounts,
West Block, 5 R.K. Puram,
New Delhi - 22.


Respondents 1 to 3
in A. No. 672/86

(Shri M.S. Padmarajaiah,
Central Govt. Standing Counsel)

This application has come up for hearing before
this Tribunal to-day, Hon'ble Shri Justice K.S. Putta-
swamy, Vice-Chairman made the following.


O R D E R

This is a transferred application received from
the High Court of Karnataka Under Section 29 of the
Administrative Tribunals Act, 1985 ('the Act').



2. Prior to 23.12.1971, the applicant was working as an Accounts Officer ('AO') in the Defence Accounts Department of the Government of India. On 7.11.1972, Government by its Notification No.68018(2)/71/AN.II (Annexure-B) promoted the applicant, from 23.12.1971 as an Assistant Controller ('AC') in the time scale of Rs. 400-450-480-510-EB-700-40-1100-50/2-1250. From 23.12.1971 the applicant worked as AC till he retired from service on 1.7.1981. Without however disputing these facts the respondents claim that the promotion of the applicant was under a scheme, formulated by Government and communicated the same by its letter No.37015(1)/70-AN-II dated 23.7.1971 the correctness of which also is not disputed by him.

3. On the recommendations of the IV Pay Commission Government classified the posts of AC carrying the time scale of Rs.400-1250, into two grades called 'Senior time scale' and 'Junior time scale' the former carrying Rs. 1100-50-1600 and Rs.700-40-900-EB-1100-50-1300 on and from 1.1.1973. On and from that date the applicant became entitled to the 'Senior time scale of pay' and was also treated as such. But notwithstanding the same, the applicant was not extended that time scale of Rs.1100-1600 till he retired from service. His protests and representation to extend him the time scale of Rs. 1100-1600 did not bear fruit before the authorities and that ^{by its letter} his first claim in this application. He also



claims for two advance increments from 23.12.1971 and a Special Pay of Rs.100/- under the orders of Government made on 1.5.1975 and 26.2.1975 respectively (Annexure A & F). As the respondents did not accede to all these claims, the applicant approached the High Court on 22.1.1981 in W.P. No.1278/81 under Article 226 of the Constitution which ^{on transfer} ~~has~~ been numbered as Application No.672/86.

4. In justification of their orders and the denial of the claims made by the applicant, the respondents have filed their statement of objections before the High Court.


5. Shri M. Narayanaswamy, learned counsel for the applicant, contends that ^{his client's} on ~~promotion~~ as AC and his fitment in the senior timescale grade from 1.1.1973 and the discharge of duties of that post from that date till he retired from service, ^{& him} the respondents were bound to extend the Senior timescale of pay of Rs.1100-1600 from 1.1.1973 and not the timescale of Rs.1100-1500 as had been illegally improperly done in violation of Articles 14 and 16 of the Constitution. In support of his contention, Shri Narayanaswamy strongly relies on the ruling of the Supreme Court in RANDHIR SINGH V., UNION OF INDIA in AIR 1982 SC 879.

②

6. Shri M.S. Padmarajaiah, learned Senior Central Government Standing Counsel, appearing for the respondents, contends that the promotion of the applicant was under a special scheme formulated by Government on 23.7.1971 and those promoted under that scheme, were only entitled to the timescale of Rs.1100-1500 and not the time scale of Rs.1100-1600. In support of his contention Shri Padmarajaiah strongly relies on the ruling of the Supreme Court in KATYA YANI DAYAL & OTHERS V., UNION OF INDIA & OTHERS in AIR 1980 SC 1285.

7. The scheme or order made by Government on 23.7.1971 for making promotions, to the posts of AC regulating the terms and conditions of promotions, does not regulate the time scale of pay of promotees to the posts of ACs. On this view itself the order of Government made on 23.7.1971 has no relevance to decide the question. Even otherwise we are not now concerned with the promotion or the non-promotion of the applicant or the terms and conditions on which he was promoted. We are now only concerned with the effect of promotion and his claim for the senior timescale of pay.

8. We have earlier noticed that the applicant on his promotion as an AC and the revision of the pay scales of that post from 1.1.1973 had become entitled to the Senior timescale grade of ACs. On and from 1.1.1973 to 30.6.81 the ~~fact~~ fact that the ~~the~~ applicant worked and discharged the duties of a Senior timescale grade AC only is not also in dispute at all.



9. When the applicant had become entitled to and had discharged the duties of the senior timescale grade AC ^{he should} ~~he had~~ necessarily be allowed to draw the senior timescale of pay attached to that post. In other words the fitment of the applicant from 1.1.1973 must only be in the revised senior time scale of pay of Rs.1100-1600 and cannot be anything other than that. When a person is posted against a post and discharges the duties of that post, then he should normally be paid only the time scale attached to that post and no other. Every principle of Government service and logic only supports that and that conclusion. On this simple ground and logic the claim of the applicant is well founded.

10. We are also of the view that the claim of the applicant for the fitment in the senior timescale of pay of Rs.1100-1600 from 1.1.1973 cannot also ^{be denied} ~~on~~ the ratio of the ruling of the Supreme Court in RANDHIR SINGH V., UNION OF INDIA in AIR 1982 SC 879 and other cases. We are also of the view that the principles in KATYAYANI DAYAL AND OTHERS V., UNION OF INDIA AND OTHERS in AIR 1980 SC 1285 relied on by Shri Padmarajaiah do not bear on this question.

11. Shri Narayanaswamy, next contends that the claim of the applicant for special pay of Rs.100/- had been illegally denied by the respondent.

12. Shri Padmarajaiah sought to support the denial of Special Pay of Rs.100/- to the applicant.


13. We have earlier upheld the claim of the applicant for his fitment in the senior timescale pay of Rs.1100-1600. But it appears that the claim of the applicant for ~~a~~ special pay does not necessarily flow from the same and depends on a variety of other factors like seniority which have not been examined and decided by the authorities on the ground that he was not entitled to Rs.1100-1600 and was only entitled to Rs.1100-1500. When that is so, then we have necessarily leave this claim to be examined and decided by the authorities, who have perforce to do the same on his fitment in the timescale of Rs.1100-1600 from 1.1.1973.

14. *1 lastly ✓*
Shri Narayanaswamy ~~Ratna~~ contends that the claim of the applicant for 2 advance increments had been illegally denied by the respondents.

15. When the applicant was promoted as an AC on 23.12.1971, he should have immediately agitated for this claim before the authorities or the courts that were then competent to adjudicate the same. We are of the view that this claim is too stale and should be rejected on that ground itself without examining the legality or otherwise of the claim. We therefore reject this claim of the applicant.

16. In the light of our above discussion, we make the following orders and directions:

(1) We declare that the applicant is entitled for ~~his~~ fitment in the senior timescale of pay of Rs.1100-1600 from 1.1.1973 and we direct the



respondents to refix his pay in that timescale from 1.1.1973 and increments that are due to him from time to time on such fitment and make available all such difference of amounts that he becomes entitled to from 1.1.1973 to 30.6.1981.


(2) We direct the respondents to examine the claim of the applicant for Special Pay of Rs-100 with due regard to this order and other orders that are in force and extend the same from such time that he becomes entitled for the same.

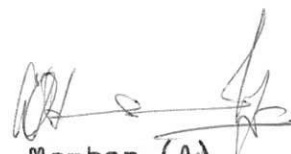
(3) We dismiss this application in so far as it relates to two advance increments from 23.12.1971 and

(4) We also direct the respondents to refix the pension and retirement gratuity with due regard to the refixation of his pay from 1.1.1973 and Special Pay from such date as he is entitled, and

(5) We direct the respondents to extend all such financial benefits as the applicant has become entitled with all such expedition as is possible in the circumstances of the case, and in any event, within four months from the date of receipt of this order.

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


Vice-Chairman
20/1/87


Member (A)
20.1.87

REGISTERED

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH
@@@@@@@@@@@@@@@@

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

Dated : 4-1-88

CONTEMPT OF COURT APPLICATION NO. 25/87 & A.No. 696/87 /88(F)
IN APPLICATION NO. 672/86(T)

W.P. NO

Applicant

Shri M.V. Narayanaswamy

Respondents

V/s The Secy, M/o Defence & 2 Ors

To

1. Shri M.V. Narayanaswamy
A/6-2, Sriram Goch Colony
Basantnagar
Madras - 600 090

2. The Secretary
Ministry of Defence
South Block
New Delhi - 110 011

3. The Financial Adviser(Defence Accounts)
Ministry of Defence
South Block
New Delhi - 110 011

4. The Controller General of
Defence Accounts
West Block V
R.K. Puram
New Delhi - 110 066

5. 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/~~STAY~~/
~~INTERIM ORDER~~ passed by this Tribunal in the above said
application on 7-12-87.

Encl : as above

[Signature]
DEPUTY REGISTRAR
~~SECTION OFFICER~~
(JUDICIAL)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE

DATED THIS THE 7th DAY OF DECEMBER, 1987

Present : Hon'ble Justice Sri K.S.Puttaswamy .. Vice-Chairman

Hon'ble Sri L.H.A.Rego .. Member(A)

COC APPLICATION No. 25/87 & A.696/87

M.V.Narayanaswamy,
Assistant Controller of
Defence Accounts(Retired),
residing at No.A/6-2
Sriram Goch Colony,
Besantnagar,
Madras - 600 090.

...

Applicant

vs.

1. Union of India represented by its
Secretary(Sri S.K.Bhatnagar)
M/o Defence, South Block,
Central Secretariat,
New Delhi - 110 011.

2. Financial Adviser(Defence Accounts)
(Sri V.S.Jafa), M/o Defence,
South Block, Central Secretariat,
New Delhi - 110 011.

3. Controller General of Defence
Accounts, (Sri R.B.Kapoor),
West Block-V, R.K.Puram,
New Delhi - 110 066. ...

Respondents

(Sri M.Vasudeva Rao ... Advocate)

This application has come up before the Tribunal
today. Hon'ble Justice Sri K.S.Puttaswamy, Vice-chairman
made the following :

ORDER

As the parties in these cases are common and the
questions that arise for determination are inter-connected,
it is convenient to dispose of these cases by a common order.
We, therefore, propose to dispose them of, by a common order.

2. These cases are a sequel to an order made on
20.1.1987 by us, in Application No.672 of 1986(Annexure-I),
which was a transferred application received from the High



9. Sri M.Vasudeva Rao, learned counsel appearing for the contemnors contends, that the Controller had faithfully implemented the order made by us both in letter as well as in spirit and is therefore, not guilty of contempt.

10. In compliance with the order made by us, the Controller had passed an order on 6.5.1987. We have no reason at all, to doubt the bona fides of the Controller in making that order. We will even assume that that order is an erroneous one for purposes of this case. But that by itself, is hardly a ground to hold that the Controller is guilty of contempt. We therefore, see no merit in this claim of the applicant.

11. Even otherwise, the applicant had challenged that very order, the validity of which we must necessarily examine. In that view, we consider it proper not to pursue these contempt proceedings.

12. On the foregoing discussion, we hold that these contempt of court proceedings are liable to be dropped.

13. We now proceed to examine the correctness of the two orders in Application No.696 of 1987.

14. Sri Narayanaswamy contends, that on the application of the order dated 14.11.1975 of the Government of India printed as Appendix-9 at pages 422-435 of Swamy's Compilation of FRSR Part-I Eighth Edition, his pay as ACDA as on 1.1.1973, had to be fixed at Rs.1500/- per mensem and the increments due thereon allowed till he retired from service.

15. Sri Rao sought to support the order of the Controller.



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16. There is no dispute that the applicant had been promoted to the IDAS senior time-scale of pay in 1971 and that he continued to hold the same, till he retired from service on 30.6.1981.

17. On the earlier occasion in 1974, the Controller had fixed the very pay now fixed by him. But, notwithstanding the same, we have earlier held that the pay of the applicant required to be refixed as on 1.1.1973. We need hardly say that what had been fixed earlier by the controller as the pay of the applicant did not commend itself to this Tribunal. We, therefore do not propose to annul the order, on this ground only.

18. On 14th November, 1975 the Government made a detailed order inter-alia regulating refixation of pay of the members of the IDAS split into 2 grades, one with the junior time-scale of pay and the other with the senior time-scale of pay from 1.1.1973. The re-fixation of pay of the applicant is required to be done in terms of this order, which is a complete code in itself.

19. Sub-para(ii) of Para I of the order dated 14.11.1975, which is relevant reads thus :

"(ii) Directly recruited officers appointed to a service prior to 1.1.1973, who have not completed four years of service in the pre-revised junior scale or both in the pre-revised and revised junior scales shall also, on their promotion to senior charges after 1.1.1973, be allowed only a special pay of Rs.150/- over their pay in the revised junior



[Handwritten signature]

scale till they have completed four years of service, and shall be allowed the minimum of the senior scale in the 5th and 6th years. Officers who have completed four years of service in the pre-revised or both the pre-revised and revised junior scales but have not completed six years of service therein shall also on their promotion to the senior scale after 1.1.1973, be placed at the minimum of the senior scale."

Under this provision, we must first notionally fix the pay of the applicant who had reached the 14th stage at Rs.1250/- per mensem in the junior time-scale of pay. After so fixing his pay, the increase in his pay in the senior time-scale should be determined in terms of the Concordance Table printed as Annexure-I to the order, subject ^{to} however, to the maximum allowed in sub-para (ii) of para 1 of the order. When so done or computed, the pay of the applicant as on 1.1.1973 in the senior time-scale of pay had to be fixed at Rs.1450/- and not at Rs.1500/- per mensem.

20. Unfortunately, the controller had either ignored the order dated 14.11.1975 of the Government of had mis-applied the same.

21. On the foregoing discussion, we hold that the pay of the applicant as on 1.1.1973 in the senior time-scale of pay had to be and is fixed at Rs.1450/- per mensem.



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22. When the pay of the applicant is so fixed at Rs.1450/- per mensem as on 1.1.1973, on the very terms of our earlier order and otherwise also, the applicant had to be allowed the increments due to him till he retired from service, in accordance with the Rules regulating the same.

23. Sri Narayanaswamy next contends, that the order of the CGDA disallowing Special Pay of Rs.100/- per month, was illegal, improper and unjust.

24. Sri Rao sought to support the order of the CGDA.

25. In our earlier order, we left open the question of Special Pay to be decided by the CGDA himself.

26. In pursuance of our order, the CGDA on an in depth examination, had rejected the same by giving cogent and convincing reasons in support of the same. We are of the view that every one of these reasons for rejecting the claim of the applicant ^{is} sound and valid.

27. When the applicant did not hold the post to which special pay was attached, for whatever reason that may be, with which we are not now concerned, the applicant cannot at all lay claim for Special Pay of Rs.100/- per mensem. We see no merit in this claim of the applicant and therefore reject the same.

28. In the light of our above discussions, we make the following orders and directions :

- (a) We drop Contempt of Court Proceedings in Application No.25 of 1987 against the contemnors.



- (b) We quash order No.T/AN/479 dated 6.5.1987 of the Controller(Annexure P3).
- (c) We declare that the pay of the applicant as on 1.1.1973, should be refixed at Rs.1450/- per month in the time-scale of Rs.1000-1600. We direct the respondents to so refix the pay of the applicant and then allow all such increments as are admissible to him under the Rules, till he retired from service and make available to him all such difference of amounts as he was entitled to on that basis, with all such expedition as is possible in the circumstances of the case and in any event, within 3 months from the date of receipt of this order.
- (d) We direct the respondents to re-fix the pension of the applicant with due regard to the refixation of pay and the increments to be allowed as above, till he retired from service, with all such expedition as is possible in the circumstances of the case and in any event, within 3 months from the date of receipt of this order.
- (e) We dismiss Application No.696 of 1987 in so far as it claims Special Pay of Rs.100/-per month.

29. Applications are disposed of in the above terms. But, in the circumstances of the cases, we direct the parties to bear their own costs.

Sd _____
VICE-CHAIRMAN

Sd _____
MEMBER(A)

an.

7/12/1987
- Time Copy -
SECTION OFFICER
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE

