

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH : BANGALORE

DATED THIS THE 13TH NOVEMBER, 1986

Present

The Hon'ble Shri Ch. Ramakrishna Rao : Member (JM)

The Hon'ble Shri L.H.A. Rego : Member (AM)

Application No.4 of 1986(T)  
(W.P. No.17140/83)

R. Santhanam,  
Senior Accountant,  
Office of the Deputy Director  
of Accounts (Postal),  
Bangalore-9

.... Applicant

(Shri Ranganath Jois, Advocate)

- |   |                  |             |
|---|------------------|-------------|
| 1. The Union of India,<br>represented by its Secretary,<br>Ministry of Communication,<br>New Delhi. | )<br>)<br>)<br>) | Respondents |
| 2. The Director General of<br>Posts and Telegraphs,<br>New Delhi.                                   | )<br>)<br>)<br>) |             |
| 3. The Deputy Director of<br>Accounts (Postal),<br>Karnataka Circle,<br>Bangalore.                  | )<br>)<br>)<br>) |             |

(Shri N. Basavaraju, Advocate)

This application has come up for hearing before  
this Tribunal on 31.7.1986, Hon'ble Shri L.H.A. Rego,  
Member (AM), made the following:

O R D E R

This is a Writ Petition bearing No.17140/1983 under  
Article 226 of the Constitution, transferred by the High Court  
of Judicature, Karnataka, to this Bench of the Central  
Administrative Tribunal, under Section 29 of the Administrative  
Tribunals Act, 1985 and is renumbered as Application No.4 of  
1986. The main prayer of the applicant is that the impugned  
order dated 29.7.1983 of Respondent 3, stopping Special Pay of  
Rs.35/- per mensem with effect from 14.7.1983 consequent on his  
posting as Senior Accountant be quashed and that the respondents  
be directed to protect this Special Pay in the light of

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Fundamental Rule 22(a)(ii)(iv) and of the instructions issued by the Government of India in the matter.

2. Succinctly the facts of the case are as follows: The applicant joined service in the Postal Department in 1959 as a Sorter and was promoted as Junior Accountant in 1970, in which post he served for more than 13 years. The cadre of Accountants in the Postal Department comprises the following two grades with the pay scales shown against each:

<u>Grade</u>	<u>Pay scale</u>
	Rs
(i)	(ii)
Junior Accountant	330-560
Senior Accountant	425-700

3. The total strength of the Senior and Junior Accountants in this common cadre (for which a common seniority list is maintained) is about 300 at present, of which about 14 are Senior Accountants and the rest Junior Accountants.

4. According to Office Memo dated 5.5.1979 of the Union Ministry of Finance, Special Pay of <sup>Rs</sup>35/- per mensem came to be sanctioned for 10% of the posts in the common cadre. Accordingly, the applicant who was a Junior Accountant at the time, was allowed to draw the Special Pay from 1979. Special Pay was meant for posts to be clearly identified as carrying discernible duties and responsibilities of a complex nature and therefore, seniority-cum-fitness would not be the criterion to fill in these posts as stated in Office Memo dated 29.11.82 of the Union Ministry of Finance in respect of Upper Division Clerks (UDCs) in the Non-Secretariat Administrative Offices. The benefit of Special Pay of Rs.35/- per mensem sanctioned for certain posts of UDCs as above, was granted to the Junior Accountants in the Circle Postal Accounts Offices, with effect

.../-

from 5.5.1979, according to the O.M. dated 5.5.1979 of the Union Ministry of Finance.

5. On 8.7.1982, the applicant was posted to officiate as Senior Accountant in the pay scale of Rs.425-700. Thereon, the applicant requested respondent 3 on 20.7.1982, by a letter, that the Special Pay of Rs.35/- per mensem drawn by him, as Junior Accountant, in the pay scale of <sup>Rs</sup> 330-560, be protected and merged in the pay scale of the post of Senior Accountant to which he was appointed. Since the respondent did not grant his request and consequently, he was put to financial loss, the applicant declined the post of Senior Accountant offered to him. The applicant refers to OM dated 29.11.1982 of the Union Ministry of Finance, which clarified in respect of UDCs that Special Pay of Rs.35/- per mensem, is admissible to posts in the Selection Grade within 10% ceiling. He states that though he was appointed in the Selection Grade this benefit was denied to him. His appointment as Senior Accountant was, therefore, on his request cancelled in 1982. His repeated requests to the higher authorities for protection of his Special Pay were of no avail.

6. Respondent 3 again on 13.7.1983, posted the applicant to officiate as Senior Accountant. Since the applicant feared disciplinary action against him, if he did not resume duty in the post, in which he was posted a second time, he accepted the posting and joined on 12.9.1983, much against his will, as this entailed financial loss to him on account of withdrawal of Special Pay.

7. The applicant refers to the instructions issued by respondent 2, in his letter dated 21.6.1983 wherein inter alia it has been stated that:

(i) Posts not exceeding 10% of the combined sanctioned

.../-



strength of Junior and Senior Accountants carrying discernible duties and responsibilities of a complex nature, be clearly identified, as posts justifying Special Pay of Rs.35/- per mensem.

- (ii) As far as possible equality be maintained in the proportion of Senior and Junior Accountants for grant of Special Pay.

8. Out of the approximate total strength of 300 Accountants both Junior and Senior, we are told that the present number of Senior Accountants is only 14. As a result, only 2 Senior Accountants become eligible for Special Pay, as against about 28 Junior Accountants. The applicant being far too junior among the Senior Accountants, does not seem to have been considered for grant of Special Pay. Consequent to his posting as Senior Accountant, not only has he been deprived of Special Pay which he was drawing earlier but we are told, that he has not even been given the benefit of an increment in the Selection Grade in the post of Senior Accountant.

9. We have heard at length the rival contentions of both the parties. In fact, the statement of objects<sup>con</sup> filed by the respondents, is far too cursory and does not help unravel all the facts. The question of recovery of dues (pertaining to a Society) from the applicant, referred to therein, has not been urged before us by either party at the time of the hearing and we therefore refrain from expressing any view thereon.

10. The learned counsel for the respondents contends that appointment of the applicant to the post of Senior Accountant, which is considered as a Selection Grade in the common cadre of Accountants, is not deemed as "promotion" but is merely a movement upward in the pay scale ladder. We are unable to appreciate this contention, as in the case of General Manager vs. Rangachari

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A 1962 SC 36(41), the Supreme Court, has held that the word 'appointment' is wide enough to include the matter of promotion, even to the selection post which covers Selection Grade posts. This being so, it must be admitted that the applicant was promoted as Senior Accountant on 12.9.1983, but he did not derive any benefit in the post of promotion, as he continued to draw the same basic pay as he drew in the earlier post of Junior Accountant. On the contrary, he lost the benefit of Special Pay of Rs.35/- per mensem, he was drawing in that post and what is worse, his juniors have been drawing inclusive of Special Pay more emoluments, than he was drawing in the post of promotion as Senior Accountant.

11. In our view, this anomaly seems inherent in the creation of two grades namely that of Junior and Senior Accountants. As already held by us, appointment of the applicant from the grade of Junior Accountant to that of Senior Accountant which has a distinctly higher time-scale of pay, is indicative of higher responsibility involved and is, therefore, in the nature of a promotion. The applicant was granted Special Pay in the lower grade of Junior Accountant by virtue of his capability to handle responsibilities of a complex nature in the particular post assigned to him in that grade. In this context his appointment thereafter to the grade of Senior Accountant carrying a distinctly higher time-scale of pay should naturally lead to infer that he was required to shoulder still higher responsibility in this grade and that such an appointment should take the character of promotion. There are rules which provide for and regulate appropriate fixation of pay in the post of promotion by grant of increment as an incentive, in such an event. We see no reason as to why the applicant should be denied this benefit, apart from rectifying

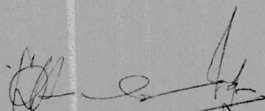
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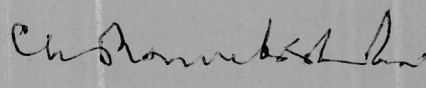
the patent anomaly pointed out above. We, therefore, direct the respondents to fix the pay of the applicant accordingly in the post of Senior Accountant (to which he was promoted) within a period of two months from the date of receipt of this order.

12. As regards the claim of the applicant for Special Pay of Rs.35/- per mensem, in the scale of Senior Accountant, we do not find any justification. Special Pay is seen to be attached to 28 posts of Junior Accountants and 2 posts of Senior Accountants. In this view, when a Junior Accountant drawing ~~/~~ Special Pay moves to the post of Senior Accountant, he cannot ipso facto claim the benefit of Special Pay, which is attached only to the post of Junior Accountant. As already stated, the position may appear anomalous but this is a matter for the administration to decide how best to remove the anomaly.

13. In the result, the application is partly allowed.

No order as to costs.

  
(L.H.A. Rego)  
Member (AM)  
13.11.1986

  
(Ch. Ramakrishna Rao)  
Member (JM)  
13.11.1986

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CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH  
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Commercial Complex(BDA),  
Indiranagar,  
Bangalore - 560 038

Dated :

C.C. Application No. 14/87 / 86( )  
In Application No. 4/86(T)

WJF: NOK

Applicant

**R. Santhanam**

V/s. Secy., Min. of Communications, & ors.

To

1. Sri. R.Santhanam,  
Senior Accountant,  
O/o. The Deputy Director,  
of Accounts (Postal),  
B'lore- 9.
2. Shri..M.S.Nagaraja, Advocate  
35. (Above Hotel Swagath),  
1st Main Road,  
Gandhinagar,  
B'lore- 9.
3. The Secretary,  
Min. of Communication,  
New Delhi.
4. Sri.K.V.Raghava Chari,  
Director General of Posts & Telegraphs,  
New Delhi.
5. Sri.C.S.Narasimhan,  
Deputy Director of Accounts  
(Postal), Karnataka Circle,  
BANGALORE.
6. Sri.M.S.Padmarajaiah,  
Sr. Central Govt. Standing Counsel,  
High Court Buildings,  
Bangalore- 1.

Subject: SENDING COPIES OF ORDER PASSED BY THE BENCH IN

C.C. APPLICATION NO. 14/87

Please find enclosed herewith the copy of the Order/~~Interim Order~~  
passed by this Tribunal in the above said Application on 26-6-87

Encl : as above.

SECTION OFFICER  
(JUDICIAL)

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CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE

DATED THIS THE 26TH DAY OF JUNE, 1987.

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

C.C. APPLICATION NO. 14/87

Sri. R. Santhanam,  
Senior Accountant,  
O/o the Deputy Director  
of Accounts (Postal),  
Bangalore-9.

.... Petitioner.

(Dr. M.S. Nagaraja, Advocate)  
v.

1. The Secretary,  
Ministry of Communication,  
New Delhi.
2. Sri. K.V. Raghava Chair,  
Director General of Posts  
and Telegraphs,  
New Delhi.
3. Sri. C.S. Narasimhan,  
Deputy Director of Accounts  
(Postal), Karnataka Circle,  
Bangalore.

.... Contemnor..

(Shri M.S. Padmarajaiah, CGSSC)

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

O R D E R

In this application made under Section 17 of  
the Administrative Tribunals Act of 1985 and the  
Contempt of Courts Act, 1971, the petitioner has  
moved this Tribunal to punish the Contemnor  
for wil-  
ful disobedience of the order made in his favour  
on 12.11.85 in A. No.4/1986.





2. Shri M.S. Padmarajaiah, learned Senior Standing Counsel for the Central Government, appearing for the contemnors, has placed before us memo no. 437/Admn/Per.V/CAT/RS dated 24.6.87 which had accorded the financial benefits due to the petitioner in terms of the order made by this Tribunal and the acquittance roll evidencing the payment of the amounts also due to him thereto. Dr. M.S. Nagaraja learned counsel for the petitioner, on persuing the memo dated 24.6.87, and the acquittance roll dated 25.6.87 does not dispute that the order made by this Tribunal stands fully complied by the contemnors. In this view, these proceedings are liable to be dropped. We therefore drop the proceedings. But in the circumstances of the case, we direct the parties to bear their own costs.



Sd \_\_\_\_\_

Sd \_\_\_\_\_


Vice-Chairman

Member (A) 26.6.1987

26/6/87

- True Copy -

sr/Mrv.

  
SECTION OFFICER  
CENTRAL ADMINISTRATIVE TRIBUNAL  
ADDITIONAL BENCH  
BANGALORE

Dated the 15-3-89

The Additional Registrar,  
Supreme Court of India.

~~The Registrar~~  
Central Administrative Tribunal  
Bangalore Bench, Bangalore.

..Petitioner (S)

R. Santhanam

..Respondent (8) ..

I am to inform you that the Petitions above-mentioned for Special Leave to Appeal to this Court was/were filed on behalf of the Petitioner above-named from ~~the Judgment and~~ Order of the ~~High Court of~~

Karnataka/Central Administrative Tribunal  
noted above and that the same was <sup>not pressed and</sup> ~~were~~ <sup>of accordingly</sup> ~~disposed of~~ <sup>was</sup> by  
this Court on the 30th day of January, 1989

Yours faithfully,  
*James A. [Signature]*  
 for Asst. Registrar.

AS |