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Hon'ble Shri L.H.A. Rego

APPLICATION NO. 1741/86(F)

Applicant

(Dr. Nagaraj, Advocate)

- ## Respondents

(Shri M. Vasudeva Rao, Advocate)

This application has come up before the court today, Hon'ble Shri L.H.A. Rego, Member(A) made the following:

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2. The salient facts which have occasioned this application are as follows. The applicant is an ex-serviceman who had served in the Indian Air Force as a Combatant from 21.9.1955 to 5.8.1968. He was sanctioned Reservist Pension at the rate of Rs. 15/- per mensem for life, with effect from 21.9.1970, according to Annexure 'A'.

3. He was offered a temporary post in the civil service, as Lower Division Clerk(LDC) in the Regional Health Office (RHO, for short) Southern Region Bangalore, on 29.8.69, according to Annexure-B, on the terms and conditions specified therein, on pay of Rs. 110/- per mensem, i.e. the minimum of the pay scale of Rs. 110-3-131-4-155-EB-4-175-5-180. The applicant contends, that his monthly pay should have been fixed at Rs. 155/- instead, by giving him the benefit of 13 increments (corresponding to each year of the period of 13 years of prior service rendered by him in the Indian Air Force) in accordance with the instructions issued by the Govt. of India under Rule 27 of the Fundamental Rules.

4. The applicant served as LDC in the RHO from 12.9.1969 to 31.8.1975 but for certain reasons, resigned from this post on 31.8.75 AN, on account of his transfer to RHO Hyderabad.

5. Later, he seems to have represented to the authorities for taking him back in service. He was therefore offered the post of LDC under the Central Government Health Scheme Bangalore (CGHS for short) on 19.12.1975, according to Annexure- R-1. He joined this post on 27.12.1975 forenoon, and his pay was fixed at Rs. 260/- per mensem, in the pay scale of Rs. 260-6-290-EB-6-326-8-366-EB-8-390-10-400. He is

said to have been promoted to the post of Upper Division Clerk in CGHS, Bangalore, with effect from 13-1-1981 and confirmed as LDC in the same organisation, with effect from 5-1-1982.

6. Subsequent to his appointment under the CGHS as above, the applicant is seen to have represented to respondent(R)2, on 31-3-1977 (Annexure-C) inviting attention to his earlier representation dated 20-1-1977 (wherein he had explained the circumstances under which he was required to tender resignation as LDC in RHO, Bangalore) and requesting for protection of the pay drawn by him, prior to his resignation, by grant of advance increments. With reference to his earlier representation dated 20-1-1977, R2 is seen to have communicated to R1 on 22-3-1977 (Annexure R2), that taking duly into account the circumstances explained by the applicant, he was allowed as a special case, to count his previous service as LDC in the RHO, Bangalore, from 2-9-1969 to 31-8-1975 (i.e., the date on which he resigned from this post) for the purpose of pension. But, he was informed that the intervening period i.e., from 1-9-1975 to 26-12-1975 would not count and therefore, would be treated as dies non.

7. The applicant is said to have represented for the first time on 15-5-1982 to the Director, CGHS, New-Delhi(Annexure-R4), to grant him the benefit of 13 increments, while fixing his pay on his appointment to the civil service(corresponding to each year of the period of 13 years of service rendered by him in the Indian Air Force) in accordance with the instructions of the Government of India, under Rule 27 of the Fundamental Rules. That representation was forwarded by R1 to R2 on 13-5-1982(Annexure-D) recommending the same for consideration. The matter is seen to be still under correspondence between R1 and R2,

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as is evident from Annexures R-5, and Annexures R7 to R9, the date of the last annexure being 24.12.86. As the applicant has not yet secured the relief desired, he has approached this Tribunal for redress.

8. Dr. M.S. Nagaraja learned counsel for the applicant contends, that despite repeated representation, the respondents have failed to give the applicant the benefit of 13 increments (corresponding to the completed years of service in the Indian Air Force) while fixing his pay as LDC in the Civil Service; that his client has been discriminated against, in this regard, as this benefit has been conferred on other employees similarly placed in the office; and that denial of this legitimate right and benefit, ^{it} ~~is~~ amounts to violation of Articles 14 and 16 of the Constitution.

9. In rebutting these contentions, Shri M. Vasudeva Rao, the learned Additional Central Govt. Standing Counsel for the respondents submits, that the application is wholly misconceived and is hopelessly belated and is therefore not maintainable, under law or on the facts and circumstances of the case. He brings to our notice, that the applicant who was required to exercise his option within a period of six months, from the date of issue of the Office Memorandum dt. 19.7.78 of the Union Ministry of Finance (a copy of which has not been placed before us) actually did so, far too belatedly on 15.5.1982 (Annexure R-3).

10. As regards the representation dt. 15.5.1982 (Annexure R-4) addressed to the Director, CGHS, New Delhi, Shri Rao submits, that since the appointing authority of the applicant, in respect of his present post in the CGHS, is the Deputy Director (CGHS) DGHS New Delhi and the previous service of the applicant

was in another organisation namely RHO Bangalore, consideration of his past service and fixation of his pay are not within the competence of R-1 and that the representations of the applicant in regard to reckoning his past service and fixation of pay "have received due attention and consideration always and at all levels". The respondents have however nowhere explicitly stated, that but for the delay on the part of the applicant in making the representation, he is entitled to the above benefit he has claimed.

11. We have examined carefully the rival contentions and the material placed before us. If the representation of the applicant in regard to his prayer in the present application was far too belated, as contended by Shri Rao, then the respondents should have promptly given a categorical reply to the applicant, on his various representations and resolved the matter, once and for all. Instead of doing so, we notice from Annexures R 5 and R7 to R9, that the matter is still under correspondence between R1 and R2, the last annexure being dated as recently as 24.11.1986. It is seen from Annexure R7 (dt. 17.4.1986) marked as "Most Immediate", that the office of R2 had directed R1, to ascertain and intimate the reasons, as to why the applicant had not exercised option within the stipulated period, in compliance with the instructions in the office Memorandum dt. 19.7.1978, from the Union Ministry of Finance. R1 is seen to have expedited R2 on phonogram on 15.7.1986 (Annexure R8) in this regard, but yet the matter does not seem to have been resolved.


12. Though the representation dt. 15.5.1982 (Annexure R-4) was addressed by the applicant to the Director CGHS New Delhi (through proper channel), R1 is seen to have forwarded it on 18.5.1982 (Annexure D), to the Office of R2, recommending the same favourably and therefore, R1 should have pursued the matter to its end. While in fact, Annexures R5 and Annexures R7 to R9 reveal, that R1 has endeavoured to do so, the averment of the respondents in para 9 of their statement of objections [that as the matter was not within the competence of R-1, he could not do anything in regard to the representation of the applicant, to consider his past service and fix his pay according to rules, and that the representations of the applicant in this behalf " have always received due attention and consideration at all levels" (vide para 11 of the statement of objections)] is clearly self-contradictory. Since the grievance of the applicant, pertained to regulation of conditions of his civil service in CGHS and RHO, both of which were under the same Ministry, namely the Union Ministry of Health, the respondents could not have washed off their hands, on the plea, that they were not concerned with the matter. It was therefore the duty of the respondents to give a final reply to the applicant, one way or the other, with the desired expedition, on the various representations submitted by him in this regard, rather than leave them unanswered, even after a lapse of more than 5 years. In fact, from Annexure R8, it is apparent, that R1 is awaiting instructions in the matter from R2 since 15.7.1986. We cannot but express our dismay at the rather casual and leisurely manner, in which the representations of the applicant have been dealt with by the respondents.


13. In the light of our above observations we make the following order:

(1) We direct R2 to give a final and considered reply to the applicant, with reference to his representation dt. 15.5.1982 (Annexure R-4) and to Annexures R5, R7 and R8 and take necessary action thereon, within a period of 3(three) months from the date of receipt of this order.

(II) If the applicant is yet aggrieved, he is at liberty to approach this Tribunal for redress.

14. The application is disposed of in the above terms. Nor order as to costs.


MEMBER (JM) ^{30.3.87}
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MEMBER (AM) ^{1.5.87}

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

APPLICATION No. 1741/86(F)

~~(WP.No.)~~

COMMERCIAL COMPLEX, (BDA)
INDIRANAGAR,
BANGALORE-560 038.

DATED: 6 MAY 1987

APPLICANT

Vs

RESPONDENTS

S. Krishnamurthy
TO

The Chief Medical Officer
CGHS Bangalore & ors

1. Sri. S. Krishnamurthy
Upper Division Clerk,
O/o The Chief Medical Officer,
CGHS, Jayanagar,
Bangalore - 11.

3. The Chief Medical
Officer, CGHS,
III Block, West
Jayanagar
Bangalore - 11.

2. Sri. Dr. M.S. Naganaya
Advocate,
No 38, (Above Hotel Swagath)
1 Main Road, Chandni Nagar
Bangalore - 9

4. The Director General
of Health Services
CGHS,
Nirman Bhawan
New Delhi - 1.

5. The Secretary
Ministry of Health
Arogya Bhawan
New Delhi

SUBJECT: SENDING COPIES OF ORDER PASSED BY THE
BENCH IN APPLICATION NO. 1741/86(F)

Please find enclosed herewith the copy of the Order
passed by this Tribunal in the above said Application on

1-5-87.

ENCL: As above.

Sri. M.V. Rao
Addl. C.G. S.C.
High Court Bldgs
Bangalore

DEPUTY REGISTRAR
(JUDICIAL)