

REGISTERED

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH
.....

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

Dated: 18-11-87

APPLICATION NO 561 to 563 /87 (F)

W.P.No. _____

APPLICANT

Shri G. Krishnaswamy & 2 Ors

Vs

RESPONDENTS

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

To

1. Shri G. Krishnaswamy

2. Shri N. Anantha

3. Shri B.H. Anantharaj

(Sl Nos. 1 to 3 - Field Investigators,
National Tuberculosis Institute,
No. 8, Bellary Road,
Bangalore - 560 003)

4. Shri M. Narayana Swamy
Advocate
844 (Upstairs)
Vth Block, Rajajinagar
Bangalore - 560 010

5. The Secretary
Ministry of Health & Family Welfare Services
Nirman Bhavan
New Delhi - 110 011

6. The Director General of Health Services
Nirman Bhavan
New Delhi - 110 011

7. The Director
National Tuberculosis Institute
8, Bellary Road
Bangalore - 560 003

8. Shri M.S. Padmarejaiah
Central Govt. Stng Counsel
High Court Buildings
Bangalore - 560 001

Subject: SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith the copy of ORDER/8777/

~~INTERIM ORDER~~ passed by this Tribunal in the above said application

on 17-11-87

RECEIVED

Diary No. 1442152/87

Date: 19-11-87

DEPUTY REGISTRAR

(JUDICIAL)

Encl: as above.

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH BANGALORE

DATED THIS THE 17th NOVEMBER 1987.

Present : Hon'ble Sri P. Srinivasan - Member (A)

Hon'ble Sri Ch. Ramakrishna Rao - Member (J)

APPLICATION Nos. 561 to 563/1987

- | | | | |
|--------------------|---|--|--------------|
| 1. G. KRISHNASWAMY | } | Field Investigator
N.T.I., No.8., Bellary Road
Bangalore 3 | - Applicants |
| 2. N. ANANTHA | | | |
| 3. B.H. ANANTHARAJ | | | |

(By Sri M. Narayana Swamy, Advocate)

- | | |
|---|---------------|
| 1. The Union of India rep. by its
Secretary Ministry of Health & Family Welfare,
Nirman Bhawan, New Delhi | - Respondents |
| 2. The Director General of Health Services,
Nirman Bhawan, New Delhi | |
| 3. The Director, National Tuberculosis Institute,
No.8, Bellary Road, Bangalore 3 | |

(Sri M.S.Padmarajaiah, C.G.S.C.,)

These applications came up for hearing before
this Tribunal and Hon'ble Sri Ch. Ramakrishna Rao, Member (J)
to-day made the following

ORDER

These three applications are filed under Section 19
of the Administrative Tribunal Act, 1985.

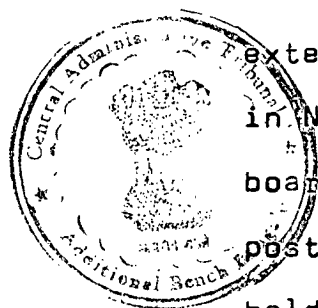
2. The facts giving raise to the applications lie in
a narrow compass: The applicants entered service as
Upper Division Clerks/Census and Publicity Assistants/
Field Assistants in the National Tuberculosis Institute ('NTI'),
Bangalore in the scale of pay of Rs.130-300 w.e.f. the date

on which they assumed charge of the posts held by them.
As the duties discharged by them pertain^{ed} to research and were technical in nature, their designation was changed to that of Field Investigator ('FI') on 11.9.1970 without any corresponding change in the scale of pay. The FIs in the National Sample Survey Organisation ('NSSO') performing similar duties as FIs in NTI were drawing the scale of pay of Rs.150-300 which was denied to the applicants. Aggrieved by the disparity in the pay scales writ petitions No. 1771 to 1777 etc of 1973 were filed in the High Court of Karnataka by G.Hanumantha Rao and others who were working as FIs and as a result of the judgement rendered therein^{on 19.7.74} the FIs in NTI were also granted the scale of pay of Rs.150-300. The scale of pay of FIs in NSSO was revised to Rs.130-320 w.e.f. 1.12.1972 and Rs.380-640 w.e.f. 1.1.1973 and these scales of pay were also granted to the FIs working in NTI pursuant to the judgement rendered by the High Court on 29.1.1982 in w.p. Nos 11875 to 11882 of 1977. The scale of pay of FIs in NSSO was further revised to Rs.425-700 w.e.f. 1.5.1982 by order dated 9.8.1985 passed by the Ministry of Planning and the scale of pay of Rs.1400-2300 was granted to them w.e.f. 1.1.1986 on the basis of the recommendations of the 4th Pay Commission. The FIs in NTI were not given the revised pay scales of Rs.475-700 but continued to draw pay in the scale of Rs.380-640 upto 31.12.1985 and in the scale Rs.1350-2200 w.e.f. 1.1.1986. Representations made by the applicants working as FIs in NTI claiming parity with their counterparts in NSSO were turned down by the Director, NTI by memo dated 13.7.1987. Aggrieved by this memo the applicants have filed these applications.

Ans

3. The thrust in the argument of Sri M.Narayana Swamy, learned counsel for the applicants, is that on two earlier occasions the respondents had granted to the FIs parity in the scale of pay with their counterparts in NSSO pursuant to the directions given by the High Court as the duties discharged by his clients were comparable to the FIs in NSSO. The respondents should have, therefore, granted to his clients the benefit of the scale of pay of Rs.425-700 and Rs.1400-2300 from 1.5.1982 and 1.1.1986 respectively. According to Sri Narayana Swamy, the denial of the benefit of the revised pay scales to the FIs in NTI, among whom the applicants figure, is arbitrary and discriminatory in the eye of law and as such the memo dated 13.7.1987 should be struck down as illegal and inoperative.

4. Sri M.S.Padmarajaiah, learned counsel for the respondents, strenuously contends that the post of Investigator in NSSO and the post of ~~NSSO~~ FIs in NTI are not comparable posts in as much as there is no post of FI in NSSO; that the order dated 9.8.1985 passed by the Ministry of Planning extending the scale of pay of Rs.425-700 to the Investigators in NSSO w.e.f. 1.5.1982 was a sequel to an award passed by the board of arbitration which is not binding on NTI; that the post of Investigator in NTI is a promotional post to those holding the post of FIs; that the restructuring of the posts in NTI was made in 1979 by introducing the selection grade ('SG') for FIs in the scale of Rs.425-640 and post of Team Leader ('TL') in the scale of pay of Rs.425-640 in addition to the posts of Investigators in the scale of pay of Rs.425-700 and Senior Investigators in the pay scale of Rs.550-900 and

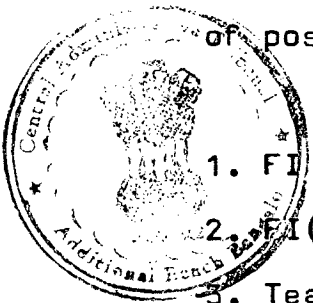


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the revision in the pay scales of Investigator in NSSO w.e.f. 1.5.1982 and 1.1.1986 will not ipso facto be applicable to the applicants.

5. We have considered the rival contentions carefully. We would have normally accepted the contention of Sri Narayana Swamy that the scale of pay for the post of Investigator in NSSO as revised w.e.f. 1.5.1982 and later from 1.1.1986 should have been made applicable to the applicants and others working as FIs in NTI for the reasons given in the judgement of the High Court dated 29.1.1982 but for certain events that ^{have} happened in the intervening period. The High Court in W.P. No. 1771 to 1777 of 1973 was considering the relative position - in respect of pay - of FIs in NTI and Investigators in NSSO from 1.7.1959 onwards. It held that the post of FI in NTI corresponded with that of Investigator in NSSO in all respects and therefore directed that the former be given the same pay as the latter. Again in W.P. Nos. 11875 to 11882 of 1977 the High Court had to deal with the situation as it existed on 1.12.1972 and 1.1.1973. Upto 1.1.1973 - and indeed upto 197⁹ - there was only one cadre of Field Investigators in NTI which corresponded to the cadre of Investigators in NSSO. However in 1979 there was a restructuring of posts in NTI creating the following hierarchy

of posts :



Post	Scale of pay prior to 1.1.86	Scale of pay after 1.1.86
1. FI	Rs. 380-640	Rs.1350-2200
2. JFI(SG)	Rs. 425-640	Rs.1400-2300
3. Team Leader (TL)	Rs.425-640	Rs.1400-2300
4. Investigator	Rs. 425-700	Rs.1400-2300
5. Senior Investigator	Rs. 550-900	Rs.1640-2900

The posts at serial nos. 2,3 & 4 were created for the first time in 1979 with retrospective effect from 1976. We note from paragraph 6 of the reply filed on behalf of the respondents

-5-

that there are no posts of FI(SG) and TL in NSSO but only the posts of Investigator, Assistant Superintendent and Superintendent. The scale of pay for Investigator is the same both in NTI and NSSO w.e.f. 1979. We are, therefore, satisfied that as a result of the aforesaid restructuring of the posts in NTI, the raison d'etre of the judgement rendered on 29.1.82 by the High Court is no longer applicable to the case of the applicants.

6. In this connection, we may refer to the following observations in the decision of this Tribunal in the case of M.S.Krishna Murthy, Team Leader, NTI (A.NO.1698/86) rendered on 16.4.1987, to which one of us (Sri Ch.Ramakrishna Rao, Member (J)) was a party:

"It is stated in the reply extracted above that FIs as a whole constitute the feeder cadre for promotion to the post of TL and FI(SG) is not in the nature of a promotion to a person to hold the post of FI at the basic level. If so, there is force in the contention of Sri Narayanaswamy that the post of FI (SG) and the promotional post of TL should not carry identical scales of pay. After giving careful thought to the matter, we are of the view that the pay scale of a promotional post should be higher than the pay scale of a selection grade post and unless a difference in the pay scales of the two posts is maintained, the concept of promotion from a lower post to a higher post will be totally eclipsed.

"We, therefore, direct the respondents to consider within three months from the date of receipt of the order the prayer of the applicant as set out in para 7 of the application in the light of the guidelines (Annexure F). The application is allowed as indicated above."

An I.A. seeking extension of time for complying with the directions contained in the judgement extracted above was filed by the respondents and this Tribunal granted further time of three months order dated 18.8.1987. Thus the restructuring of the posts effected in 1979 cannot be ignored.

7. In view of the foregoing discussion, we find no substance in these applications.

8. In the result the applications are dismissed. Parties shall bear their own costs.



True copy

Sd/-

DEPUTY REGISTRAR Ch. Ramakrishna Rao)
CENTRAL ADMINISTRATIVE TRIBUNAL Member (J)

ADDITIONAL BENCH
BANGALORE

Sd/-

(P.Srinivasan)
Member (A)

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Commercial Complex(BDA)
Indiranagar
Bangalore - 560 038

Dated : 21-3-88

REVIEW APPLICATION NOS. 158 to 160 / 87
IN APPLICATION NOS. 561 to 563/87(F)
W.P. NO. _____

ApplicantRespondent

Shri G. Krishnaswamy & 2 Ors
To

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

1. Shri G. Krishnaswamy
 2. Shri N. Anantha
 3. Shri B.H. Anantharaj
- (Sl Nos. 1 to 3 -

Field Investigators
National Tuberculosis Institute
No. 8, Bellary Road
Bangalore - 560 003)

7. The Director
National Tuberculosis Institute
No. 8, Bellary Road
Bangalore - 560 003

8. Shri M.S. Padmarajaiah
Central Govt. Stng Counsel
High Court Building
Bangalore - 560 001

4. Shri M. Narayanaswamy
Advocate
844 (Upstairs)
Vth Block, Rajajinagar
Bangalore - 560 010
5. The Secretary
Ministry of Health & Family
Welfare Services
Nirman Bhavan
New Delhi - 110 011
6. The Director General of
Health Services
Nirman Bhavan
New Delhi - 110 011

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 Review Application on 11-3-88.

[Signature]
DEPUTY REGISTRAR
(JUDICIAL)

Encl : As above

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NO. 561 to 63/87(F)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BANGALORE.

DATED THIS THE 11th DAY OF MARCH 1987

Present : Hon'ble Shri Ch. Ramakrishna Rao - Member (J)

Hon'ble Shri P. Srinivasan - Member (A)

Review Application Nos.158 to 160 of 1987.

1. G. Krishnaswamy (RA No.158/87 - A.No.561/87)
Field Investigator
No.27, N.T.I. Staff Quarters
No.8, Bellary Road, Bangalore 3
2. N. Anantha (R.A. No. 159/87 - A.No. 562/87)
Field Investigator
N.T.I., No. 8 Bellary Road
Bangalore 3
3. B.H. Anantharaj (R.A. No. 160/87 - A. No. 563/87)
Field Investigator
N.T.I., No.8, Bellary Road
Bangalore 3 - Applicants

(Sri M. Narayanaswamy, Advocate)

1. Union of India represented by its
Secretary, Ministry of Health & Family
Welfare, Nirman Bhawan,
New Delhi 11
2. The Director General of Health Services,
Nirman Bhavan, New Delhi
3. The Director
National Tuberculosis Institute,
No.8, Bellary Road, Bangalore 3 - Respondents
(Sri M.S. Padmarajaiah, Advocate)

These review applications came up for
hearing before this Tribunal and Hon'ble Shri Ch.Ramakrishna Rao,
Member (J) to-day made the following

ORDER

The applicants in application Nos.(referred to
as Original Applications : OAs) 561, 562 and 563 of 1987
have filed these three applications (referred to as
review applications : RAs) for review of the judgement

of this Tribunal delivered in the OAs on 17.11.1987.

2. The applicants in the OAs are Field Investigators ('FIs') in the National Tuberculosis Institute, Bangalore ('NTI'). They joined service in NTI in the pay scale of Rs.130-300 as Upper Division Clerks ('UDCs'). They were designated as FIs on 11.9.1970 and were granted the pay scale of Rs.150-300 ^{Investigators} which the Z in the National Sample Survey Organisation ('NSSO') were drawing pursuant to the judgement of the High Court of Karnataka ('High Court') in W.P. Nos. 1771 to 1774 of 1973 delivered in 1974. Later, they were granted the pay scale of Rs.180-320 with effect from 1.12.1972 and Rs.380-640 with effect from 1.1.1973 pursuant to the judgement of the High Court in W.P.Nos. 11875 to 11882 of 1977 delivered on 29.1.1982. ~~As~~ The scale of pay Investigators in NSSO was further revised to Rs.425-700 with effect from 1.5.1982 and Rs.1400-2300 with effect from 1.1.1986 while the FIs in NTI continued to draw the scale of pay of Rs.380-640 upto 31.12.85 which was revised to Rs.1350-2200 with effect from 1.1.1986. Representations made by the applicants to the respondents claiming benefit of revised scales of pay of Rs.425-700 and Rs.1400-2300 which came into effect in NSSO from 1.5.1982 and 1.1.1986 respectively were turned down. Aggrieved by this the applicants filed the OAs which were dismissed by this Tribunal on 17.11.1987. The applicants in the RAs have sought a review of the aforesaid judgement of this Tribunal.

3. Sri M. Naranaswamy, learned counsel for the applicants, strenuously contends that the judgement of this Tribunal delivered on 17.11.1987 suffers from an error^{apparent} on the face of the record which is a cogent ground for review of the judgement. Sri Narayanaswamy has elaborated his argument thus: The applicants were entitled to the revised scales of pay which came into effect in NSSO from 1.5.1982 and 1.1.1986 respectively having regard to the decisions of the High Court pursuant to which the scales of pay which they were drawing at that time were revised and since there was no material change in the position of the applicants vis-a-vis the Investigators in NSSO, they should have been given the benefit of the revised scales of pay from 1.5.1982 and 1.1.1986. The Tribunal while declining the relief to the applicants was swayed by the circumstance that there was restructuring of the staffing pattern obtaining in NTI during 1979 and on account of this, the applicants were not entitled to claim parity with Investigators in NSSO regarding the scales of pay applicable to the latter with effect from 1.5.1982 and 1.1.1986. Actually, the restructuring of staffing pattern in NTI came into existence only during 1985-1986 but not during 1979 and as the claim of the applicants relates to ^{a date} prior to 1.1.1986 i.e. with effect from 1.5.1982, the revised scales of pay applicable to the Investigators in NSSO should have been made applicable to the applicants also. The view taken by the Tribunal is that the raison d'etre of the judgements of the High Court

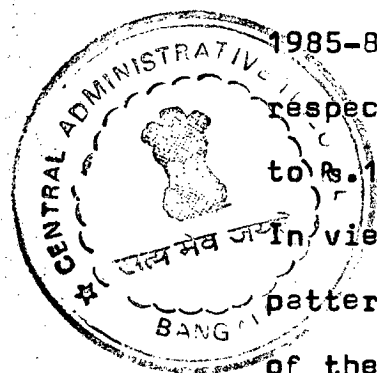
was not applicable to the case of the applicants as a result of the restructuring of the staffing pattern is, therefore, erroneous and thus admits of review.

4. Sri M.S.Padmarajaiah, learned counsel for the respondents, submits that the change in the staffing pattern in NTI has come into effect in two phases. The first was in 1979 when the posts of FIs Selection Grade ('FISG') and ~~Team Leader (XXXXX)~~ were created with retrospective effect from 1976. The second was in 1985 when the posts of Investigators and Senior Investigators were created. The first phase in the change of the staffing pattern in NTI having taken place prior to 1982, the applicants are not justified in stating that the judgements of the High Court ipso facto ~~were~~ applicable to them even after 1982. The view taken by the Tribunal that on account of the restructuring of the staffing pattern, the applicants were entitled to the benefit of the judgements rendered by the High Court does not suffer from error apparent on the face of the record so as to justify a review of the judgement earlier rendered on 17.11.1987.

5. We have considered the rival contentions carefully. The question which falls for consideration in these RAs is whether there was change in the staffing pattern of NTI before 1982 so as to render the revised scale of pay of Investigators in NSSO brought about by order dated 9.8.1985 with effect from 1.5.1982 and the further revision in the

scale of pay of the aforesaid Investigators effected on 1.1.1986 in the context of the recommendations of the IVth Pay Commission^{inapplicable.} Paragraph 5 of our order dated 17.11.1987 proceeded on the basis that the restructuring of the posts set out therein occurred in 1979 but in fact the restructuring took place in two phases.

The first was in 1979 when the post of FISG was created in 1979 with retrospective effect from 1976. Before the creation of this post the promotion avenue for the incumbent of the FI was to the post of TL and the chances of promotion to FIs were brightened in 1979 by introducing the post of FISG. In view of this, we were inclined to take the view that the promotional opportunities for FIs in NTI had improved in 1979 and the respondents were justified in taking it into account for negating the applicability of the revised scale of pay granted to the Investigators in NSSO on 9.8.1985 with effect from 1.5.1982. The second phase was in 1985-86 when the posts of Investigator and Senior Investigator were created in 1985-86 carrying scales of pay of Rs.425-700 and Rs.550-900 respectively and these two scales of pay stood revised to Rs.1400-2300 and Rs.1640-2900 with effect from 1.1.1986. In view of these changes which took place in the staffing pattern in NTI, we took the view that the raison d'être of the judgement rendered by the High Court on 29.1.1982 ceased to apply to the case of the applicants. We do not find any infirmity in the view so taken by us.

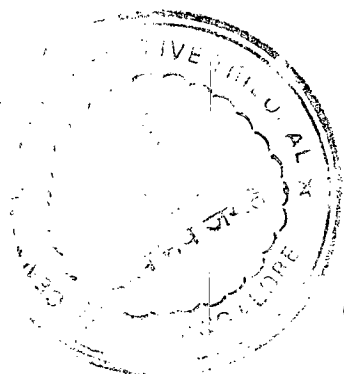


6. In Northern India Caterers India Ltd v. Lt. Governor of Delhi, AIR 1980 SC 674, the Supreme Court had occasion to observe :

"An error apparent on the face of the record exists if of two or more views canvassed on the point it is possible to hold that the controversy can be said to admit of only one of them. If the view adopted by the Court in the original judgement is a possible view, having regard to what the record states, it is difficult to hold that there is an error apparent on the face of the record."

We have no doubt in our mind that the view taken by us in our judgement dated 17.11.1987 is the only view possible on the points debated before us. But even taking it that two views are possible, it is not open to us to hold that the judgement rendered by us in the OAs suffers from any error apparent on the face of the record so as to call for a review.

7. In the result the RAs are dismissed. Parties to bear their own costs.



Sd/-

(Ch. Ramakrishna Rao)
Member (J)

11/11/88

Sd/-

(P. Srinivasan)
Member (A)

11/11/88

TRUE COPY

bsg/-

JOY DEPUTY REGISTRAR (JDL)
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE