

REGISTERED

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH
@CCCCCCCCCCCC@

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

Dated : 4-1-88

CONTEMPT OF APPLICATION NO 25/87 & A.No. 696/87 / 86(F)
COURT 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
Besantnagar
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/~~STAN~~/
~~INTERIM ORDER~~ passed by this Tribunal in the above said
application on 7-12-87.

Encl : as above

Jai Halli
JAI HALLI
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

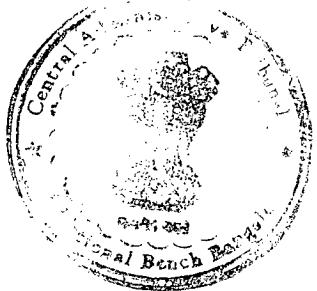
(Sri M.Vasudeva Rao ... Advocate)

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



Court of Karnataka. We have set out in detail, all the necessary facts and a restatement of them in detail is not very necessary. But, in order to make our order in these cases, a self-contained one, we will notice only those facts that are absolutely necessary to appreciate the controversies that arise in these cases.

3. On and from 23.12.1971 till 30.6.1981, on which day he retired from service, on attaining superannuation, the applicant worked as Assistant Controller of Defence Accounts(AC) in the Defence Accounts Department of the Government of India. When he was so promoted, the time-scale of pay of that post was Rs.400-1250. On and from 1.1.1973, the cadre of ACs consisted of two grades, namely; senior time scale of Rs.1100-1600 and the junior time-scale of pay of Rs.700-1300. Even though the applicant became entitled to the senior time-scale of pay, from 1.1.1973 and onwards and he actually worked against a post carrying that time scale of pay, he was not allowed the benefits of that time-scale. So also his claim for special pay of Rs.100.00 per month was not allowed by the authorities. On these and other claims, with which we are not now concerned, our order in Application No.672 of 1986 directed the respondents as hereunder:

- (1) We declare that the applicant is entitled for fitment in the senior time-scale of pay of Rs.1100-1600 from 1.1.1973 and we direct the respondents to refix his pay in that time-scale 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.100.00 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.

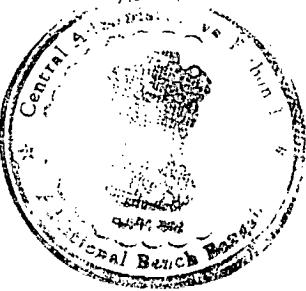
4. In compliance with these directions, the Controller of Defence Accounts(ORs) South, Madras-18(Controller) and the Controller General of Defence Accounts, New Delhi(CGDA) have made their orders on 6.5.1987 and 29.4.1987 respectively.

5. In his order dated 6.5.1987(Annexure-P3 in A.No.696 of 1987), the Controller, had refixed the pay of the applicant at Rs.1200-00 per mensem in the substantive post of Accounts Officer and at Rs.1250-00 per mensem in the senior time-scale. In his order dated 29.4.1987 the CGDA had rejected the claim of the applicant in its entirety for special pay. We will examine their correctness in A.No.696 of 1987 in their order. But, before doing so, it is first necessary to examine the case of the applicant in CCA No.25 of 1987.

6. The applicant contends that the Controller in refixing his pay as on 1.1.1973, as had been done by him earlier, had wilfully flouted our order and therefore was liable to be punished under the Contempt of Courts Act of 1971 (1971 Act).

7. In his reply filed in CCA No.25 of 1987 the Controller has denied the allegations of the applicant. He has asserted that the order made by him was bona fide and was in faithful and proper compliance of our order.

8. Sri M.V.Narayanaswamy, the applicant in the cases contends, that the Controller had deliberately flouted the order made in Application No.672 of 1986 by us and was guilty of contempt and, therefore, he should be punished under the 1971 Act and appropriate directions issued for fixation of his pay at Rs.1500/- per mensem as on 1.1.73.



9. Sri M.Vasudeva Rao, learned counsel appearing for the contestants 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 has 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.

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 command 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

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 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 or 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.

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.



an.

Sd —

VICE-CHAIRMAN
7/12/1987

Sd —

MEMBER(A)
7-2-87

— THE COPY —

HOD
SECTION OFFICER
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL MEMBER
BA.122

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE

DATED THIS THE 17TH DAY OF MARCH, 1988

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

REVIEW APPLICATION NO. 7/1988

Shri M.V. Narayanaswamy,
No.A/6/2/Sriram,
GOCH Colony,
Basant Nagar,
Madras.

... Applicant

v.

1. Union of India by its
Secretary, M/o Defence,
South Block,
New Delhi-11.
2. Financial Adviser,
Defence Services,
M/o Defence, South Block,
New Delhi-11.
3. Controller General of Defence
Accounts, West Block-V, R.K. Puram,
New Delhi-66. ... Respondents.

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 22(3)(f) of the
Administrative Tribunals Act, 1985 ('Act') the applicant
has sought for a review of our order made on 7.12.1987 in
A.No.696/87 in so far as the same rejected his claim for
a special pay of Rs.100 per month for a certain period.



The applicant who was the applicant in A.No.696/87
appeared in person and argued that case before us. On the

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH
* * * * *

Commercial Complex (BDA)
Indiranagar
Bangalore - 560 038

Dated : 22 MAR 1988

REVIEW APPLICATION NO. 7 / 88
IN APPLICATION NO. 696/87(F)
W.P. NO.

Applicant

Shri M.V. Narayanaswamy

To

1. Shri M.V. Narayanaswamy
A/6/2, 'Sriram'
G.O.C.H. Colony
Besant Nagar
Madras - 600 090

Respondent

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

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 17-3-88.

By [Signature]
DEPUTY REGISTRAR
(JUDICIAL)

COPY TO
696/87(F)

Encl : As above

asserting that his Review Application, computing the limitation from the date of receipt of the order was in time, has however, sought for condonation of delay on the ground that he was under the impression that the period of limitation had to be computed from the date of receipt of the order. We will even accept the plea of the applicant and condone the delay and deal the application on merits.

5. In our order, we have examined the claim of the applicant for special pay and upheld the order made by the Controller General of Defence Accounts (CGDA) who had rejected the same. Every one of the reasons ~~to~~ ^{to} urged by the applicant at great length really asks us to reexamine every one of the reasons given by us for rejecting his claim for special pay, as if we are a court of appeal. We cannot act as a court of appeal and sit in judgment on our own order. We cannot re-examine the order as if we are a court of appeal and ~~to~~ ^{to} come to a different ~~opinion~~ ^{Conclusion}. We are of the view that the order in so far as it had rejected the claim of the applicant does not suffer from any patent error to justify a review of our order.

6. In the light of our above discussion we hold that this application is liable to be rejected. We, therefore, reject this application at the admission stage itself without notice to the Respondents.

TRUE COPY

Sd/-

RECORDED & INDEXED
DEPUTY REGISTRAR (JDLT)
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE

bsv/Mrv.

Sd/-

N MEMBER (A) 17.3.88