

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: BANGALORE

DATED THIS THE THIRTEENTH DAY OF JUNE, 1988

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

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

APPLICATION NOS. 822 & 823/1987

1. Smt. Jaya Venkatesh
W/O. G. Venkatesh
Assistant (F&A)
National Aeronautical Laboratory
Kodihalli
Bangalore - 17.
2. Shri A.M. Muralinath
S/O. A. Madhava Rao
Assistant (F&A)
National Aeronautical Laboratory
Kodihalli
Bangalore - 17.
(Shri M. Narayana Swamy, Advocate)

.. Applicants

Vs.

1. The Director General
Council of Scientific & Industrial
Research
Rafi Marg
NEW DELHI.
2. The Director
National Aeronautical Laboratory
Kodihalli
Bangalore - 560 017.
(Shri H. Sulaiman Sait, Advocate)

.. Respondents

This application having come up for
hearing before this Tribunal today, Hon'ble Vice Chairman
made the following:

ORDER

These are applications made by the
applicant under Section 19 of the Administrative Tribunals
Act, 1985 (Act).

2. Prior to 26.8.1982, the applicants in
Application Nos. 822 and 823 of 1987 were working as Upper

Division Clerk and Junior Stenographer respectively, in the National Aeronautical Laboratory ('NAL'), a Unit of the Council of Scientific and Industrial Research, New Delhi, (CSIR) a society registered and functioning under the Societies Registration Act XXI of 1860, and were eligible to appear for an in service examination, prescribed for the posts of Assistants (Finance and Accounts) Assistants⁷. On 26.8.1982, an examination was held for the said posts by the CSIR in which the applicants were declared successful and were therefore included in the panel of persons suitable for appointment to the posts of Assistants, prepared on 9th May, 1983 (Annexure-C).

3. The applicants claim that on the basis of their inclusion in the panel, they had been appointed as Assistants on an ad hoc basis, from 4.2.1985 and 1.6.1986 respectively, which is disputed by the respondents, though their continuance as such is not disputed.

4. On or about 17.7.1987, the applicants represented to the CSIR that the condition on the time limit stipulated in their empanelment viz., 2 years from the date of issue be ignored and their appointments as Assistants be regulated without reference to the same but it had rejected the same on 1.9.1987 (Annexure-N). Hence, these applications.

5. The applicants have urged a number of grounds in support of their cases. We will notice and

deal with them in due course.

6. In their reply, the respondents have urged that these applications made on 24.9.1987 reckoning the period of limitation from 9.5.1985, were barred by time. On merits, the respondents have urged that the stipulation of 2 years as the life of the panel under Rule 75 of the Rules and Regulations of the Council of Scientific and Industrial Research ('Rules') was valid and legal.

7. Shri H. Sulaiman Sait, learned counsel for the respondents contends that computing the period of limitation from 9.5.1985 these applications were barred by time and call for dismissal in limine. Shri M. Narayana Swamy, learned counsel for the applicants disputes the same and contends that the limitation should be computed only from 1.9.1987.

8. In the order dated 9th May, 1983, the CSIR, had no doubt specified the period of the panel as 2 years from the date of issue.

9. But with due regard to the events that ensued thereafter, the applicants made representations before the CSIR urging the same, with a request to ignore the stipulation of 2 years time-frame for the panel and to regulate their conditions of service without reference thereto. These representations of the applicants, were rejected by the CSIR on 1.9.1987. When that is so, then the period of limitation for redressal of their grievance under the Act, will commence only from the date of receipt of that order and not from 9th May, 1985. When so computed these applications filed within 24 days from the date of the order are within time. We see no merit in this objection of Shri Sait and we reject the same.

10. Shri Swamy contends that the stipulation of the life of the panel, as 2 years was a void condition and was in any event, illegal.

11. Shri Sait contends that the stipulation of 2 years under Rule 75 of the Rules and otherwise also was valid and legal. In support of his contention, Shri Sait strongly relies on the ruling of the Supreme Court in THE STATE OF HARYANA v. SUBASH CHANDER MARWAH & ORS. (AIR 1973 S.C. 2216 - 1973 S.C.C. (L&S) 488 and a Division Bench ruling of the Delhi High Court in H.L. DUTTA vs. M.C.D. & ORS. (1971 (1) SLR vol.(5) 800).

12. Recruitment to the various posts including the posts of Assistants in the CSIR is regulated by the Council of Scientific and Industrial Research Administrative Services (Recruitment and Promotion) Rules, 1982 ('Recruitment Rules') framed by the CSIR. These Rules are the primary rules which regulate recruitment to the posts of Assistants also.

13. Rule 6 of the Recruitment Rules which deals with the posts of Assistants, which is material reads thus:

"Grade IV-Assistant (Finance & Accounts) - (Rs 425-800): Recruitment to this Grade shall be made on local basis as under:-

- (i) 75% from amongst local U.D.C.'s/ L.D.Cs and Junior Stenographers who have completed not less than 3 years approved service as U.D.C./ Junior Stenographer and 6 years as L.D.C. on the result of departmental qualifying examination.

- (ii) 25% by direct recruitment of candidates possessing University Degree, age not exceeding 28 years and on the result of competitive examination and interview. Departmental candidates with requisite educational qualifications will also be eligible to compete and there will be no age restriction in their case.

Procedure for Examination: A common examination for the vacancies in a particular Zone will be conducted by the CSIR Headquarters and the names of the candidates qualifying in the said examination will be forwarded to the respective Laboratories/Institutes in the Zone for making appointments on the basis of preferences shown by the candidates in their applications for a particular Laboratory/Institute. (UDCs, LDCs and Junior Stenographers from the CSIR Headquarters, if otherwise eligible, can compete in the examinations both against posts under (i) and (ii) above in the Laboratories/Institutes and vice-versa)".

This Rule only stipulates quotas, eligibility and the method of holding examinations. This Rule in terms does not authorise the stipulation of life of the panel for any period. Even the other Rules of

these Rules, do not authorise the CSIR to stipulate the life of a panel prepared and published on the examination held thereunder. If that is so, then the stipulation of the life of the panel was not authorised by the Recruitment Rules at all. We must now examine whether the same was authorised by the Rules or otherwise.

14. Rule 75 of the Rules on which reliance is placed by the respondents to sustain the stipulation reads thus:

-6-

"75(a). The scales of pay applicable to the officers and establishments in the service of the Society shall not be in excess of those prescribed by the Government of India for similar personnel, save in the case of specialists.

(b) In regard to all matters concerning service conditions of employees of the Society, the Fundamental and Supplementary Rules framed by the Government of India and such other rules and orders issued by the Government of India from time to time shall apply to the extent applicable to the employees of the Society.

Notwithstanding anything contained in this Bye-law, the Governing Body shall have the power to relax the requirement of any rule to such extent and subject to such conditions as it may consider necessary."

In this Rule also, we are primarily concerned with sub-rule (b) only.

15. Sub Rule (2) of Rule 75 provides that in regard to all matters concerning service conditions of the employees, the Rules and orders made by Government from time to time, shall also govern the employees of the CSIR to the extent they are applicable. We are unable to see as to how this Sub Rule or Rule 75 in its entirety authorises the CSIR to specify the life of a panel prepared under the Recruitment Rules.

16. On the other hand on the application of this Rule itself, the applicants are justified in asking us to rely on the order of Government dated 8.2.1982

(Annexure-A). On the terms of this order also it was not open to the CSIR to fix any time limit for the panel prepared under the Recruitment Rules.

17. The examination prescribed for the post of Assistants under Rule 6 of the Recruitment Rules was a "qualifying examination" and not a "competitive examination". A qualifying examination, in a department merely decides the fitness or otherwise of the person for the post. The fitness or otherwise of the person is decided once and for all and not again and again intermittently as in a competitive examination. On this view, we cannot uphold the panel life of 2 years stipulated in the order.

18. In Subash Chander Marwah's case, the precise question did not arise for consideration. Hence the ratio in this case does not bear on the question.

19. In Dutta's case, the Delhi High Court had not referred to the Rules or law that empowered the life of a panel or select list and had not given reasons for its conclusions which prima facie, supports Shri Sait. For these reasons, with respect, we regret our inability to subscribe to the views expressed by the Delhi High Court in Subash Chander Marwah's case.

20. On the foregoing it follows that we must strike down the offending portion in the order dated 9th May, 1983 and quash the order dated 1.9.1987 and direct the authorities to operate the panel

prepared on 9th May, 1983 till it gets exhausted.

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

- (i) We strike down the penultimate para of the order dated 9th May, 1983 of the CSIR (Annexure-C) which reads thus:
"The above panel will be valid for 2 years from the date of its issue".
- (ii) We quash the order No.31(B)/85-E.1 dated 1.9.1987 (Annexure-N) of the CSIR.
- (iii) We direct the respondents to consider the cases of the applicants for promotion and appointment to the posts of Assistants (Finance and Accounts) from out of the panel prepared on 9.5.1983 by the CSIR in accordance with law and the other conditions stipulated in that order and extend all such benefits to which they are entitled in law.

22. 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

13/6/1988

Sd/-

MEMBER (A) 13.6.1988

mr.

TRUE COPY

R. V. Venkatesh
DEPUTY REGISTRAR (JDL)
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Registered

Commercial Complex (BDA)
Indiranagar
Bangalore - 560 038

Dated : 21 JUN 1988

APPLICATION NOS. 822 & 823 / 87(F)

W.P. NO. _____

Applicant(s)

Smt Jaya Vekatesh & another
To

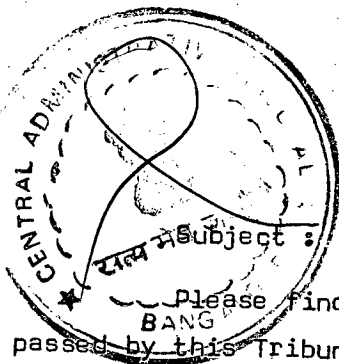
V/s

Respondent(s)

The DG, CSIR, New Delhi & another

1. Smt Jaya Venkatesh
Assistant (F&A)
National Aeronautical Laboratory
Kodihalli
Bangalore - 560 017
2. Shri A.M. Muralinath
Assistant (F&A)
National Aeronautical Laboratory
Kodihalli
Bangalore - 560 017
3. Shri M. Narayana Swamy
Advocate
844 (upstairs)
V Block, Rajajinagar
Bangalore - 560 010

4. The Director General
Council of Scientific & Industrial
Research (CSIR)
Rafi Marg
New Delhi - 110 011
5. The Director
National Aeronautical Laboratory
Kodihalli
Bangalore - 560 017
6. Shri H. Sulaiman Sait
Advocate
New No. 99/12 (Old No. 52)
Infantry Road
Bangalore - 560 001



Subject : SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith the copy of ORDER/STAX/INTERIM ORDER
passed by this Tribunal in the above said application(s) on 13-6-88.

Encl : As above

DEPUTY REGISTRAR
(JUDICIAL)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: BANGALORE

DATED THIS THE THIRTEENTH DAY OF JUNE, 1988

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

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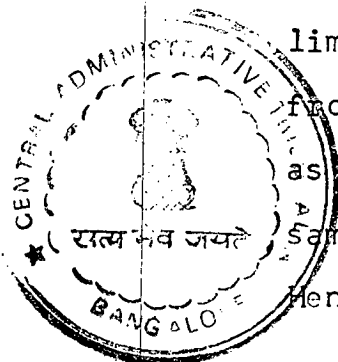


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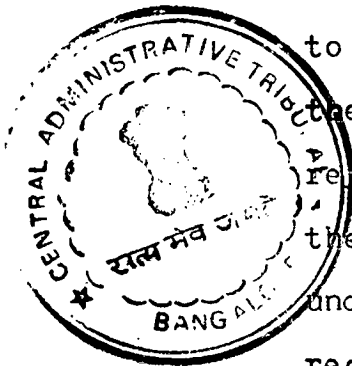
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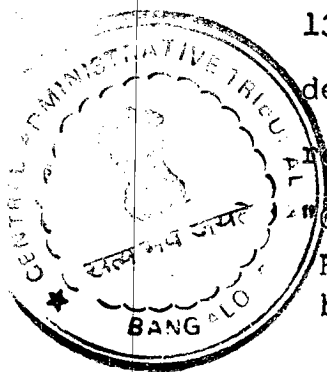
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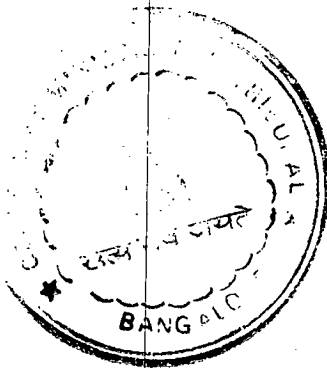
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(Annexure-A). On the terms of this order also it was not open to the CSIR to fix any time limit for the panel prepared under the Recruitment Rules.

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22. 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

13/6/1988

Sd/-

MEMBER (A)

13.6.1988

[Handwritten signature]
20/6

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH
.....

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

To

Dated, 21 JUN 1988

1. Shri.Sanjeev Malhotra,
All India Services Law Journal,
Hakikat Nagar, Mal Road,
New Delhi- 110 009.
2. Administrative Tribunal Reporter,
Post Box No.1518,
Delhi- 110 006.
3. The Editor,
Administrative Tribunal Cases,
C/o.Eastern Book Co.,
34, Lal Bagh,
Lucknow- 226 001.
4. The Editor,
Administrative Tribunal Law Times,
5335, Jawahar Nagar,
(Kolhapur Road),
Delhi- 110 007.
5. M/s.All India Reporter,
Congressnagar,
Nagpur.

Sir,

I am directed to forward herewith a copy of the under
mentioned order passed by a Bench of this Tribunal comprising of
Hon'ble Mr. Justice K. S. Puttaswamy Vice-Chairman/
Member(J) and Hon'ble Mr. L. H. A. Rego Member(A)
with a request for publication of the order in the Journals.

Order dated 13-6-88 passed in A.Nos. 822 & 823/87(F)

Yours faithfully,

S. V. Venkata Reddy
(B.V.VENKATA REDDY)
DEPUTY REGISTRAR(J).

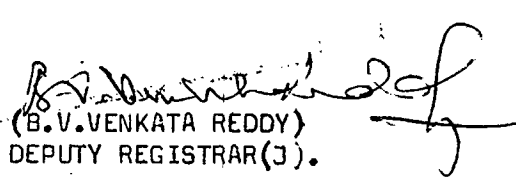
o/c.

Copy with enclosure forwarded for information to:

1. The Registrar, Central Administrative Tribunal, Principal Bench, Faridkot House, Copernicus Marg, New Delhi- 110 001.
2. The Registrar, Central Administrative Tribunal, Tamil Nadu Text Book Society Building, D.P.I. Compunds, Nungambakkam, Madras- 600 006.
3. The Registrar, Central Administrative Tribunal, C.G.O. Complex, 234/4, AJC Bose Road, Nizam Palace, Calcutta- 700 020.
4. The Registrar, Central Administrative Tribunal, CGO Complex (CBD), 1st Floor, Near Kankon Bhawan, New Bombay- 400 614.
5. The Registrar, Central Administrative Tribunal, 23-A, Post Bag No. 013, Thorn Hill Road, Allahabad- 211 001.
6. The Registrar, Central Administrative Tribunal, S.C.O. 102/103, Sector 34-A, Chandigarh.
7. The Registrar, Central Administrative Tribunal, Rajgarh Road, Off Shilong Road, Guwahati- 781 005.
8. The Registrar, Central Administrative Tribunal, Kandamkulathil Towers, 5th & 6th Floor, Opp. Maharaja College, M.G. Road, Ernakulam, Cochin- 682001.
9. The Registrar, Central Administrative Tribunal, CARAVS Complex, 15 Civil Lines, Jabalpur (MP).
10. The Registrar, Central Administrative Tribunal, 88-A B.M. Enterprises, Shri Krishna Nagar, Patna-1.
11. The Registrar, Central Administrative Tribunal, C/o. Rajasthan High Court, Jodhpur (Rajasthan).
12. The Registrar, Central Administrative Tribunal, New Insurance Building Complex, 6th Floor, Tilak Road, Hyderabad.
13. The Registrar, Central Administrative Tribunal, Navrangpura, Near Sardar Patel Colony, Usmanapura, Ahmedabad.
14. The Registrar, Central Administrative Tribunal, Dolamundai, Cuttack- 753001.

Copy with enclosure also to:

1. Court Officer (Court I)
2. Court Officer (Court II)


(B.V. VENKATA REDDY)
DEPUTY REGISTRAR (J).

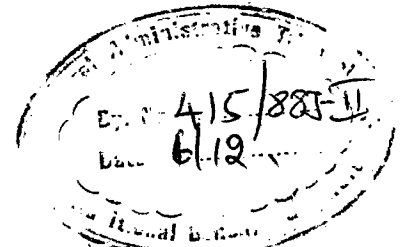
6/12/88
D.NO.4167-68/88/ S.IVA
SUPREME COURT OF INDIA
NEW DELHI.

Dated 15-11-88.

From: The Additional Registrar,
Supreme Court of India.

To

The Registrar,
Central Administrative Tribunal,
B.D.A.Complex, Indira Nagar,
Bangalore - 560 038.



PETITION FOR SPECIAL LEAVE TO APPEAL (CIVIL) NO.S 1508-09 OF 1988
Petition under Article 136 of the Constitution of India for
Special leave to Appeal to the Supreme Court from the ~~judgment~~
~~xx~~ Order dated 13-6-88 of the ~~High Court~~ of
Central Administrative Tribunal, Bangalore in Application
Nos.822 & 823 of 1987.

The Director, General,
Council of Scientific & Industrial
Research & ~~Ops.~~ ~~Govt.~~

Vs.

....Petitioners

Smt.Jaya Venkatesh & ~~Ans.~~

....Respondents

Sir, I am to inform you that the petitions above-Mentioned
for Special Leave to Appeal to this Court was filed on behalf
of the petitioner above-named from the ~~judgment~~ Order
of the ~~High Court~~ Central Administrative Tribunal, Bangalore
~~xx~~ noted above and that the same ~~was~~ were
dismissed by this Court on the 14th day of November,
1988.

Yours faithfully,


for Addl. Registrar.

/I.

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