

REGISTERED

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH
.....

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

Dated: 16-12-87.

APPLICATION NO 318 /87 (F)
W.P.No. _____

APPLICANT

Shri M.B. Shankar

To

Vs

RESPONDENTS

The Secy, M/o Personnel & External Affairs
New Delhi & another

1. Shri M.B. Shankar
'Kesari', 1st Floor
III Main Road
P.J. Extension
Davanagere - 577 002
2. Miss Veena Jadhav
Advocate
C/o Shri Shivaraj Patil
Advocate
'Nandi', 24, 8th Main Road
1st Cross, Vasanthanagar
Bangalore - 560 052
3. The Secretary
Ministry of Personnel & External
Affairs
New Delhi
4. The Directorate General of
Supplies & Disposal
Ministry of Defence
New Delhi
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/~~STAY~~/

~~XXXXXX~~ passed by this Tribunal in the above said application.

on 10-12-87.

RECEIVED 5 copies 17/12/87

Diary No. 1538/87

Date: 17-12-87

Encl: as above.

DEPUTY REGISTRAR
(JUDICIAL)

ofc.

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH BANGALORE

DATED THIS THE 10TH DAY OF DECEMBER, 1987

Present: Hon'ble Shri L.H.A.Rego ... Member(A)
Hon'ble Shri Ch.Ramakrishna Rao ... Member(J)

Application No. 318/87

Shri M.B.Shankar,
'Kesari', 1st Floor,
III Main Road,
P.J.Extension,
DEVANGERE-577002.

... Applicant

vs (Miss Veena Jadhav, Advocate)

1. The Union of India, by its
Secretary to the Govt.of India,
Ministry of Personnel & External
Affairs, New Delhi.

2. The Directorate General of
Supplies & Disposal,
Ministry of Defence,
Government of India,
New Delhi.

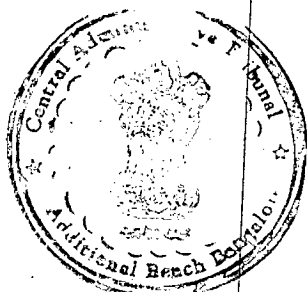
... Respondents

(Shri M.Vasudeva Rao, Advocate)

This application having come up for admission,
Hon'ble Shri Ch.Ramakrishna Rao, Member (J), made the following:

ORDER

A writ petition was filed by the applicant in
the High Court of Karnataka seeking reliefs regarding re-
fixation of his salary and pension on 1-1-1986. The same was
forwarded to this Tribunal as the High Court had no jurisdiction
to entertain the petition. On examination by the Registry,
the petition was found defective. In view of this, the petitioner
has filed the present application under section 19 of the
Administrative Tribunals Act, 1985 (for short: the Act).

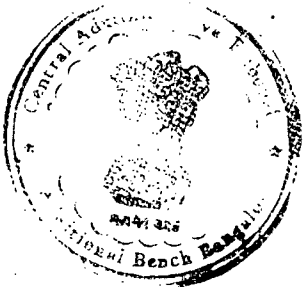


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2. The facts giving rise to this application are briefly as follows: The applicant joined the Directorate General of Supplies and Disposals (DGS&D) on 20-8-1943 as Assistant Technical Officer, later re-designated as Assistant Director. During the period from 1947 to 1955, he was posted in the Indian Embassy at Washington as Deputy Director. A gradation list of officials employed in the DGS&D as on 16-3-1959 was published in which the applicant claims that he was placed at Serial Number 1. But due recognition was not given to his seniority because of his continued absence from India and he was, therefore, not considered for promotion to posts to which he was entitled. The applicant was appointed as Chief of Laboratory and Metallurgy, Hindustan Aeronautics Limited (HAL) with effect from 25-5-1959. On 1-1-1968, he resigned from the post he was holding in DGS&D and got absorbed in HAL from where he retired from 22-10-1972. The reliefs sought by the applicant in this application are

- (a) To direct the respondents to revise the salary of the petitioner taking into consideration the revised pay scales as and when revised and to grant monetary benefits flowing therefrom;
- (b) To direct the respondents to revise the petitioner's pension after taking into consideration the revised pay scale at the time of his retirement; and
- (c) Grant such other consequential reliefs as the Hon'ble Tribunal deems fit including monetary benefits and costs.

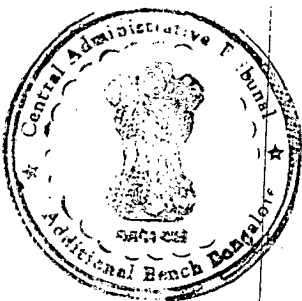
3. Shri M. Vasudeva Rao, learned counsel for the respondents, has raised a preliminary objection that this application is not maintainable since it is barred by limitation. According to Shri Rao, this Tribunal has no jurisdiction to entertain a grievance ~~arising~~ of the ^{4/2}relating to a period applicant/prior to 1-11-1982 in terms of section 21(2) of the Act.



4. Miss Veena Jadhav, learned counsel for the applicant, submits that the right of her client to claim pension arises every month and if the computation of the pension was not done properly, with reference to the pay scales which were revised during the period, her client was in service, it is open to this court to entertain the application for revision of the pay scales and the consequential fixation of the pension.

5. We have considered the rival contentions carefully. The right to receive pension by a retired Government servant is a recurring right but that does not mean that if the pension was not properly fixed in accordance with the rules, he can at any time after retirement, seek reliefs from the court in the matter of fixation of pension. In other words, if it is a case of clerical or arithmetical mistake in computing the pension, courts and tribunals would unhesitatingly give relief by correcting such a mistake. But in the present case, the applicant is seeking re-fixation of his salary in accordance with the revised pay scales during the period he was serving the DGS&D. It was nearly two decades ago, i.e. ^{on 1-1-1968} 1-1-1968 that the pension of the applicant was fixed consequent on his absorption in the HAL and we do not find any justification ^{for considering} this application for considering to entertain ~~for considering~~ the tenability of the reliefs sought by the applicant at this distance of time.

6. Miss Jadhav next submits that the applicant was making representations to the respondents from time to time in the matter of correct fixation of pay and pension, but since no reply was received to the repeated representations, he has ultimately approached this Tribunal for relief.



7. Shri Vasudeva Rao submits that by making repeated representations to the authorities concerned, the applicant's right, if any, does not survive and if he is aggrieved, he should have sought relief from the competent court.

8. The controversy is now concluded by a decision of a Division Bench of this Tribunal in V.K.MEHRA VS SECRETARY, MINISTRY OF INFORMATION AND BROADCASTING, NEW DELHI, ATR 1986 CAT 203 in which it was held that

"the Act does not vest any power or authority in the Tribunal to take cognizance of a grievance arising out of an order made prior to 1-11-1982. In such a case there is no question of condoning the delay in filing the petition but it is a question of the Tribunal having jurisdiction to entertain a petition in respect of grievance arising prior to 1-11-1982."

This decision was followed by another Division Bench in R.L. BAKSHI VS SECRETARY, MINISTRY OF DEFENCE & OTHERS REGISTRATION NO.1013/86. One of us (Shri Ch.Ramakrishna Rao) speaking for the Bench observed in the course of the judgment dated 11-9-1987:

"the grievance of the applicant having arisen on 30th March 1982, he should have invoked the jurisdiction of the competent civil court within the period prescribed under the Limitation Act, 1963. Alternatively, he should have invoked the writ jurisdiction of the concerned High Court, but this he should have done at least within six months or at the most a year from the time when the order by which he felt aggrieved was passed i.e. 30th March 1982 in the present case."

This is the norm laid down in the decision of the Supreme Court in P.S.SADABIVASWAMY VS STATE OF TAMIL NADU AIR 1974 SC 2271. The grievance of the applicant in the present case having arisen admittedly prior to 1-11-1982, this Tribunal has no jurisdiction to entertain the application. Nor is there any substance in the submission made by Miss Jadhav that as the applicant has been representing to the authorities from



Unl

time to time, the matter should be treated as still pending. The applicant has not filed copies of any such representation. Even presuming that periodical representations were made by the applicant, it has no bearing on the question of limitation. The following observations made by R.S.Pathak J (as he then was) in GIAN SINGH VS PUNJAB HIGH COURT AIR 1980 SC 1894 puts the legal position beyond doubt;

"The writ petition was filed in this court in 1978 about 11 years after the date from which the promotions are claimed. There is no valid explanation for the delay. That the petitioner was making successive representations during that period can hardly justify our overlooking the inordinate delay: relief must be refused on that ground."
(Emphasis supplied)

8. As a result of the discussion in the foregoing, we have no alternative but to reject the application in limine on the ground of limitation.

sd/-

(CH.RAMAKRISHNA RAO)
MEMBER(J)

sd/-

(L.H.A.REGO) 10.10.87
MEMBER(A)

-True copy-



[Signature]
DEPUTY REGISTRAR
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE