

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Commercial Complex(BDA)
Indiranagar
Bangalore - 560 038

Dated : 13 MAR 1989

APPLICATION NO (A) 1174 / 88(F)

W.P. NO (S) _____

Applicant (A)

Shri Vijay Saenur, IPS

To

v/s

The Secretary, M/o Information & Broadcasting,
New Delhi & 2 Ora

1. Shri Vijay Saenur, IPS
C/o Shri M.R. Shailendra
Advocate
No. 869/C, V Block
Rajajinagar
Bangalore - 560 010

4. The Chief Secretary
Govt. of Karnataka
Vidhana Soudha
Bangalore - 560 001

2. Shri M.R. Shailendra
Advocate
No. 869/C, V Block
Rajajinagar
Bangalore - 560 010

5. The Accountant General
Karnataka
Bangalore - 560 001

3. The Secretary
Ministry of Information & Broadcasting
Shastry Bhawan
New Delhi - 110 001

6. 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 a copy of ORDER/STAY/ORDER/ORDER
passed by this Tribunal in the above said application(s) on 10-3-89.

grossed
K. R. J. W.
14-3-89

dc *Releasethed*
DEPUTY REGISTRAR
(JUDICIAL)

IN THE COURT OF THE CENTRAL ADMINISTRATION
BANGALORE BENCH: BANGALORE

Dated this the 10th day of March, 1989.

Present

THE HON'BLE MR. JUSTICE K.S.PUTTASWAMY VICE CHAIRMAN
THE HON'BLE MR. L.H.A. REGO .. MEMBER(A)

APPLICATION NO.1174 OF 1988(F)

Vijay Sasnur
S/o Bhimsen
aged about 40 years,
Deputy Inspector General of Police,
Food Cell, Bangalore. .. Applicant

(By Shri M.R.Shailendra, Adv. for the applicant)

-vs.-

1. The Union of India
represented by its Secretary,
Ministry of Information & Broadcasting
New Delhi.
2. The State of Karnataka
represented by its Chief Secretary,
Vidhana Soudha, Bangalore.
3. The Accountant General
in Karnataka, Bangalore. .. Respondents.

⁴(^hSri M.Vasudeva Rao, Central Government Standing
Counsel, for respondents)

Application coming on for hearing this day
Hon'ble Mr.L.H.A.Rego, Member(A), made the following:

Order



ORDER

The applicant prays herein, for an appropriate order or direction to the respondents(R), to fix his pay in the supertime scale of pay of Rs.5100-6150 plus Special Pay of Rs.500/- per mensem, in the Indian Police Service ('IPS', for short) with effect from 3-4-1987 i.e., the date from which he was accorded promotion pro forma, to the supertime scale of pay and further, to grant him arrears on account of difference of salary and other consequential benefits.

2. The following is the background to this case.

The applicant was appointed to the IPS, on 5-7-1970 and was allocated to the Karnataka State cadre. He completed 17 years of service, in the year 1987 and was eligible for the supertime scale of pay, namely, Rs.5100-150-5400(18th year or later)-150-6150, in the post of Deputy Inspector General of Police ('DIG' for short) i.e., above the time-scale specified, in Rule 3 of the IPS (Pay) Rules 1954 ("1954 Rules" for short).

3. He was appointed on deputation to the ex cadre post of Director of Administration, Films Division, Bombay ('Director' for short), under the Union Ministry of Information and Broadcasting, with effect from 16-4-1984, under its Notification dated 23-4-1984(Ann.R-1). This post, then carried a pay scale

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of

of Rs.2000-125/2-2250, corresponding to that of DIG Level-I, in the State cadre.

4. At the time of his deputation to the Films Division, Bombay, under the Union Ministry of Information and Broadcasting, the applicant was in the Selection Grade time-scale of pay viz., Rs.1800-100-2000. He elected in 1984, to continue in this pay scale, even after deputation as above, with the benefit of Special Pay of Rs.300/- per mensem, attached to the post of Director.

5. According to the recommendations of the IV Central Pay Commission, the time-scale of pay in the Selection Grade of IPS, was revised to Rs.4500-150-5700, with effect from 1-1-1986. Consequently, the pay of the applicant in this revised scale of pay, was refixed at Rs.4,650/- per mensem, in addition to Special Pay of Rs.500 per mensem, (which was also revised) with effect from 1-1-1986, with due regard to the Notification dated 29-7-1987 (Ann.R2) of the Government of India ('GOI' for short), Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, amending Rule 9C of the 1954 Rules. The two levels in the grade of DIG viz., I and II, came to be abolished, with effect from 1-1-1986, consequent to the acceptance of the recommendations of the IV Central Pay Commission, by the GOI.



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6. It

6. It is stated, that a vacancy in the post of DIG, occurred in March 1987, in the Karnataka IPS cadre. R-2 informed the applicant, by his letter dated 16-3-1987 (Ann.A), about this vacancy and directed him to intimate within a week, his willingness or otherwise, to revert to the Karnataka IPS cadre, to avail of the benefit of promotion in the post of DIG, according to the instructions contained in letter No.31/15/83-EO(MM) dated 11-3-1983 of the Government of India, failing which, he was given to understand, that it would be presumed that he was not willing to revert to the State cadre.

7. In reply to the said communication from R-2, the applicant informed him, by his letter dated 20-3-1987 (Ann.'B'), as under:

"If my continuance at the Centre for full tenure does not deprive me of my seniority vis-a-vis my junior/juniors in the State in the direct line as well as benefit of pay in the higher post, I would like to continue at the Centre for full tenure. Otherwise, I am willing to revert to the State cadre on receipt of orders and being relieved by the competent authority at the Centre."

8. In response thereto, R-2 intimated the applicant telegraphically on 3-4-1987 (Ann.C) thus:

"Refer your D.O. Letter dated 20-3-87 regarding your reversion to State. Your inter se seniority

seniority is not affected. It is presumed that you are not repeat-not willing to revert to State - CHIEFSECY."

9. Thereon, by his Letter dated 3-4-1987(Ann.D), the applicant replied as follows:

"This has reference to your telegram dated 2-4-1987 in response to my letter dated the 20th March 1987. My letter is very clear in that I have expressed my willingness to revert to the State cadre if (kindly note the usage "if") my continuance with the Centre deprives me of not only seniority vis-a-vis my junior in the State but also benefit of pay in the higher post. Hence your presumption that I am not willing to revert to the State is not correct. In the meanwhile, Government of Karnataka, vide their order No.DPAR: 59: SPS:87, dated 2-4-1987 have promoted Shri S.Mariswamy to the supertime scale of IPS. I have not received any orders for my promotion though I happen to be senior to Shri S.Mariswamy and even though I have made amply clear that I was willing to revert to the State if my interest in regard to seniority as well as pay vis-a-vis my junior in the State are adversely affected. Perhaps decision has already been taken to allow me the pro forma promotion and benefits thereunder in which case and only in that case I have no objection to continue under the Centre as long as my cadre controlling authority allows it.

If my presumption is not correct, I reiterate that I am willing to revert to the State cadre immediately after you issue formal orders of my promotion. I am also marking copies of the correspondence between us in this context to the Establishment Officer, DPAR, Ministry of Home Affairs, Government of India and Ministry of



Information and Broadcasting to facilitate my relief from the Films Division as and when your formal orders concerning my promotion are issued.

May I also submit that my promotion to the supertime scale of IPS should be with effect from the date Shri Mariswamy takes charge as DIG in the State?"

10. The applicant states, that he had also sent a telegram to the above effect to R-2, on 3-4-1987 but, a copy thereof, does not appear to have been appended, to the application before us.

11. Pursuant to the above, the Government of Karnataka ('GOK') by its Notification, dated 18-4-1987(Ann.E), accorded pro forma promotion to the applicant, in the supertime scale of pay in the IPS, in the grade of DIG, with effect from 3-4-1987 A.N. against the promotion of Sri S. Mariswamy, IPS, who was promoted as DIG(Railways), Bangalore, in the regular line in the State cadre. The applicant is said to have addressed a Letter dated 15-7-1987, to the Accountant General, Karnataka, thereafter, requesting him to fix his pay, in consequence of the above pro forma promotion. Thereon, the Accountant General by his Letter dated 21-7-1987, addressed to the Pay and Accounts Officer, IRLA, Union Ministry of Information and Broadcasting, New Delhi ('PAO' for short) (a copy whereof, has not been furnished by the applicant), informed him,

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that

that the pay of the applicant, consequent to pro forma promotion as above, would need to be fixed, by the concerned Ministry in the GOI, to which, he was on deputation. The Accountant General, Karnataka, had in the copy of the above letter, endorsed to the applicant, with reference to his Letter dated 15-7-1987, ~~has~~ informed the applicant inter alia, that in accordance with Rule 5(5)(a)(iii) of the 1954 Rules, the service rendered by him under the GOI, would be counted for fixation of pay and regulation of increments, on his reversion to his parent cadre, only from the date his junior, namely, Shri S. Mariswamy was promoted as DIG, in the regular line and that no monetary benefit, would accrue to him till then.

12. The applicant states, that as he could not have been denied, the benefit of the supertime scale of pay, in the grade of DIG, while on deputation with the GOI, he represented the matter to the Deputy Controller of Accounts (IRLA), Union Ministry of Information and Broadcasting. He avers, that thereon, the Director (Police), Union Ministry of Home Affairs, informed the PAO on 8-12-1987 (Ann. G), that the applicant would initially draw Rs. 5100 plus Special Pay of Rs. 500/- per mensem, with effect from 3-4-1987 and that this pay, would be raised to Rs. 5400/-



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plus

plus Special Pay of Rs.500/- per mensem, with effect from 1-7-1987 and further, the next increment would accrue, only on completion of qualifying service of 12 months, from the date of stepping up of pay in the revised scale.

13. The applicant states, that despite the above clarification, the PAO intimated ^{4 him} on 7-6-1988 (Ann. 'H'), that the case was again referred by him, to the Union Ministry of Home Affairs, which had elucidated the matter as under:

"Government of Karnataka has granted proforma promotion to Shri Vijay Sasanur with effect from 3-4-1987 in the scale of DIG. As a matter of policy, proforma promotion in the supertime scale is not admissible to the officer while on deputation. He shall, however, be entitled to the same under Rule 5(5)(b) of the IPS(Pay) Rules, 1954, after his reversion to the parent cadre subject of course, to the fulfilment of certain conditions laid down therein."

14. Aggrieved thereon, the applicant has come before us, for redress.

15. The applicant was relieved from his assignment on deputation with GOI, as Director of Administration, Films Division, Bombay, on 9-5-1988 A.N. and reverted to his parent cadre and is currently holding the post of DIG, CID, Food Cell, Bangalore.

16. The respondents have filed their reply countering the application.

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17. Shri M.R.Shailendra, learned Counsel for the applicant, contended, that according to Rules 5 and 9 of the 1954 Rules, once pro forma promotion was granted by the State Government, to the supertime scale of pay, the service rendered by the officer, from the date of such promotion, would count for the purpose of fixation of initial pay and regulation of increments, if he is appointed to that post, in his parent State IPS cadre, on reversion to the State; that according to these rules, there was no specific provision, to disentitle an IPS Officer, to the benefit of supertime scale of pay in the grade of DIG, on deputation to the GOI, on promotion in the State; that consequently the, applicant is entitled to the revised supertime pay scale of Rs.5100-150-5400(18th year or later)-150-6150, in the grade of DIG plus Special Pay of Rs.500/- per mensem, with effect from 3-4-1987 i.e., the date on which his junior viz., Shri M.Mariswamy, was promoted to this grade; that elucidation by the Union Home Ministry as at para 13 supre, was arbitrary and discriminatory, as it was contrary to Rules 5 and 9 of the 1954 Rules; that administrative instructions, cannot override the statutory rules; that denial of monetary benefit in respect of pro forma promotion, only in the case of supertime scale of pay, as compared to other relevant scales of pay, was irrational and invidious



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and

and thus violative of Articles 14 and 16(1) of the Constitution; that his client had made it clear to R-2, in his Letter dated 20-3-1987 (Ann.B), that he would wish to revert to his parent cadre in the State, if his seniority and benefit of pay, consequent to grant of pro forma promotion, in the supertime scale of pay, was not safeguarded and therefore, the adverse presumption of the State Government that he was not willing to return to the State was erroneous and incorrect.

18. Shri M. Vasudeva Rao, learned Counsel for the respondents, repelled the above contentions, relying primarily on the provisions of ~~✓ of the 1954 Rules, ✓~~ Rules 5(3) and 5(5)(b) ~~✓~~ which he stressed, clearly laid down, that the service rendered by an officer, from the date of his pro forma promotion, to the supertime scale, by his parent State Government, while on deputation outside the State, would count for the purpose of fixation of initial pay and drawal of increment, only on his reversion to his parent cadre and appointment to a post in the said scale. He stated that the applicant was duly intimated of this position, by the Union Ministry of Information and Broadcasting, by its Letter dated 7-6-1988 (Ann.H) (also see para 13 above). He pointed out, that the High Court of Judicature,

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Karnataka

Karnataka, had in the case of S.M.PATTANAIK -vs.-
THE SECY GOVT OF INDIA, MINISTRY OF HOME AFFAIRS & ORS.
(W.P.No.14861/84 decided on 5-11-1986)⁴ upheld the constitutional validity of Rules 5.5(a) and (b) of the Indian Administrative Service (Pay) Rules, 1954, which were in pari materia, with the above Rules of the 1954 Rules. As a matter of policy, Shri Rao submitted, pro forma promotion in the supertime scale, is not admissible to All India Service officers in the State cadre, while on deputation to the GOI.

19. He further pointed out, that according to Notification dated 29-7-1987 (Ann.R2), of the Union Ministry of Personnel (see: para 5 above), which amended Rule 9C of the 1954 Rules, the applicant was not entitled to any monetary benefit, from the said pro forma promotion, during the period he was on deputation to the GOI, in the post of Director of Administration, Films Division, Bombay.

20. Shri Rao explained, that the post of Director of Administration, Films Division, Bombay held by the applicant on deputation to the GOI, does not appear in Schedule III to the 1954 Rules, and therefore, according to Rule 9(6) of these Rules, read with Rule 9C ibid as amended, the applicant was entitled, only to his grade pay (i.e., the Selection Grade) in the scale of Rs.4500-150-5700 plus Special Pay of Rs.500 per mensem, during the period of his deputation.

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He



He clarified, that however, the service rendered by the applicant, with effect from 3-4-1987 (i.e., the date from which he was accorded pro forma promotion in his parent cadre, in the supertime scale) while on deputation to the GOI, would count for pay fixation and drawal of increment, in the supertime scale of pay of Rs.5100-150-5400 (18th year or later)-150-6150, on his reversion to the parent cadre and his posting as DIG in that cadre.

21. Taking the above into account, Shri Rao stated, that the pay of the applicant, was fixed at Rs.4650/- plus Special Pay of Rs.500/- (revised) per mensem, in the revised pay scale, for the Selection Grade, in the IPS viz., Rs.4500-150-5700 with effect from 1-1-1986, consequent to revision of pay scales, on the recommendation of the IV Central Pay Commission, as opted by the applicant. He clarified, that the pay was so fixed by the PAO, as advised by the Union Ministry of Home Affairs and the Accountant General, Karnataka, in his Letter dated 25-12-1987 (Ann.R-4).

22. Concluding, Shri Rao submitted, that the action so taken by the PAO, was strictly in accordance with the 1954 Rules, and was in order. Besides, he said, there was no compulsion on the applicant, to continue on deputation with the GOI, after he was accorded pro forma promotion by R-2, in the supertime scale of pay, in the grade of DIG, with effect from 3-4-1987.

23. We have bestowed due thought on the rival contentions and have examined carefully, the relevant record placed before us.

24. The fate of this application hinges crucially, on the interpretation of particularly Rules 5.5(b) and 9(6), read with Rule 9C of the 1954 Rules, as amended. Rule 5.5(b) which is material, reads thus:

"5. Regulation of Increments.-

(1) to (4) xx xx xx

5(a) xx xx xx

(b) when a member of the Service, while holding a post outside the cadre, including a post under the Central Government, has been granted proforma promotion to a post in the scale of pay above the time-scale of pay specified in Rule 3 by the Government of the State on the cadre of which he is borne the period of service covered by the proforma promotion shall, on his subsequent reversion to the Cadre and appointment to a post in said scale, count towards initial fixation of pay and increments, subject to the following conditions namely:-

(i) the member of the service concerned should have been approved by the State Government for appointment to the said scale during the relevant period;

(ii) all his seniors(excluding those considered Unfit) should have started drawing pay in the super time

scale



scale on or before the date from which the proforma promotion is sought to be granted to him;

(iii) the junior next below the officer (or, if that officer has been passed over by reason of inefficiency or unsuitability or because he is on leave or serving outside the ordinary line or foregoes promotion on his own volition to that grade, the officer next junior to him not so passed over) should also have started drawing pay in that scale from that date and his appointment thereto not being fortuitous; and

(iv) the benefit should be allowed on 'one for one' basis."

(Emphasis added)

25. The words underlined in the above rule, also appear in Rule 5(3) ibid. Rule 5 ibid as a whole, in the context of the present case, deals inter alia, with fixation of initial pay and drawal of increments, on grant of pro forma promotion, outside the cadre, including a post under the GOI. It is clear therefrom, that the emphasis is, that the officer must revert to his parent cadre and be actually given a posting, in the supertime scale in that cadre, to enable him, to derive monetary benefit of that promotion, as rightly pointed out by the Accountant General, Karnataka, Bangalore, to the PAO, in his Letter dated 28-12-1987 (Ann.R-4).

26. Rules 9 and 9C, which relate to regulation of pay of members of the IPS, on appointment to posts not included in Schedule III to the 1954 Rules, and which

are pertinent to the case before us, are reproduced below:

"9. Pay of members of the Service appointed to posts not included in Schedule III.—(1) No member of the Service shall be appointed to a post other than a post specified in Schedule III, unless the State Government concerned in respect of posts under its control, or the Central Government in respect of posts under its control, as the case may be, makes a declaration that the said post is equivalent in status and responsibility to a post specified in the said Schedule.

(2) The pay of a member of the Service on appointment to a post other than a post specified in Schedule III shall be the same as he would have been entitled to, had he been pointed to the post to which the said post is declared equivalent.

(3) For the purposes of this rule 'post other than a post specified in Schedule III includes a post under a body incorporated or not, which is wholly or substantially controlled by the Government.

(4) Notwithstanding anything contained in this rule, the State Government concerned in respect of any posts under its control, or the Central Government in respect of any posts under its control, may, for sufficient reasons to be recorded in writing, where equation is not possible, appoint any member of the Service to any such post without making a declaration that the said post is equivalent in status and responsibility to a post specified in Schedule III.

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(5) A member of the Service on appointment to a post referred to in sub-rule(4), in respect of which no pay or scale has been prescribed, shall draw such rate of pay as the State Government, in consultation with the Central Government in the case of a post under the control of the State Government, or as the Central Government may, after taking into account the nature of duties and responsibilities involved in the post, determine.

(6) A member of the Service on appointment to a post referred to in sub-rule(4), in respect of which any pay or scale of pay has been prescribed, shall draw where the pay has been prescribed, the prescribed pay and where scale of pay has been prescribed, such rate of pay not exceeding the maximum of the scale as may be fixed in this behalf by the State Government, or as the case may be, by the Central Government:

Provided that the pay allowed to an officer under the sub-rule and sub-rule (5) shall not at any time be less than what he would have drawn had he not been appointed to a post referred to in sub-rule(4).

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 xxx xxx xxxx

9C. Regulation of pay of members of the service appointed to hold posts in the Central Secretariat in the scale of pay of Rs.2000-125/2-2250:- Notwithstanding anything contained in rules 8 and 9, the pay of members of the service appointed to hold posts in the Central Secretariat and carrying a scale of pay of Rs.2000-125/2-2250 shall be regulated in the manner indicated below:-

(a) He shall draw pay in the scale of pay of the post;
or

(b) His

(b) His grade pay and a special pay of Rs.300 per mensem subject to the condition that the pay and the special pay together do not exceed Rs.2450 per mensem.

2. The regulation of pay, in accordance with clause(a) or clause(b) of sub-rule(1) shall be at the option of the member of the service concerned, which should be obtained on his first appointment to a post carrying pay in the scale of Rs.2000-125/2-2250 and on every subsequent occasion when there is a change in the scale in which he would have drawn pay but for his appointment to the said post."

27. Rule 9C, speaks of the option to be exercised by the officer, on his first appointment to the above post. According to Letter dated 7.10.1987, addressed by the PAO, to the Union Ministry of Personnel and Training, Administrative Reforms, Public Grievances and Pension, the applicant is seen to have opted in 1984 (see: para 4 above), to draw pay in his Selection Grade pay scale of Rs.1800-100-2000 (later revised to Rs.4500-150-5700 on the recommendations of the IV Central Pay Commission) plus Special Pay of Rs.300/- per mensem (later revised to Rs.500/- per mensem), as against the then pay scale of Rs.2000-125/2-2250, prescribed for the post of Director of Administration, Films Division, Bombay, a post under the GOI, to which he was on deputation. The latter pay scale was distinctly higher (and corresponded to the supertime scale, then prescribed for the post of DIG, Level I) than that in the Selection



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Grade

Grade of the IPS, in which the applicant was, at the time of his deputation as above, to the GOI. Yet, the applicant, for reasons best known to him, chose to continue in this Selection Grade pay scale, ostensibly, weighing the pros and cons and particularly the additive element of Special Pay.

28. The language of Rules 5 and 9 and in particular, Rules 5(3), 5.5(b), 9(6) and 9C, is clear and precise. Conjointly read in their plain language, it is more than evident, that the applicant would derive monetary benefit of his pro forma promotion, to the supertime scale of pay, in the post of DIG in the IPS, only on his return to his parent cadre and on his securing an appointment in that post.

29. It is trite in law, that the "express mention of one thing, implies the exclusion of another" - expressio unius exclusio alterius. As stated earlier, the language of the Rules applicable to this case was explicit. It is a well known maxim, that "ignorance of the law does not excuse" - ignorantia juris non excusat. The applicant besides, was a senior officer in the IPS, who had put in as long as 18 years of service and obviously, could not feign ignorance of the rules, which had a vital bearing on his career.

30. In the correspondence that took place between him and R2, the latter had only indicated, that his seniority inter se, in his parent cadre, would not be affected, in case he continued on deputation, after accord of pro forma

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promotion

promotion to him/as the context of the telegram dated 3-4-1987(Ann.'C') implies]. Nowhere, did R2 indicated to the applicant, that the said pro forma promotion, would confer on him, monetary benefit, even if he did not choose to revert to his parent cadre but preferred to continue on deputation with the GOI.

31. The applicant is seen to have written to R2, on 3-4-1987 (Ann.'D'), for further clarification which in fact was not necessary, as the pertinent 1954 Rules, were clear and explicit, as observed by us earlier (paras 28 and 29 above). R2 does not seem to have replied to the said letter. Nevertheless, the applicant, is seen to have reconciled to the situation and continued on deputation with the GOI. "Silence is consent", as the legal maxim goes - qui tacet consentire videtur.

32. Apart from the clarity of the language of the above Rules, it does not stand to reason, that the applicant should have expected to derive the benefit of the supertime scale of pay (and perhaps even Special Pay ⁱⁿ of his deputation post) by virtue of the pro forma promotion, accorded to him, even while on deputation to the GOI, in a post, which was of a lower grade i.e., without actually discharging the duties & responsibilities of the higher post, to which he was promoted pro forma. Besides, it

✓ appears



appears, that the GOI did not deem it necessary, to upgrade the post of Director of Administration Films Division, Bombay, even temporarily, to help accommodate the applicant. It is also relevant, that earlier, the applicant, had opted to continue in his Selection Grade pay scale, even though it was lower than that of the post, to which he was on deputation with the GOI (see: para 21 above). The applicant must realise, in the above background, that "he cannot take advantage of his own wrong" - ex dolo malo non oritur actio.

33. In the light of what we have discussed above, it is apparent, that the applicant is under a misconception, about the implication of the relevant rules and therefore, his application is bereft of merit. We, therefore, dismiss the same with no order however, as to costs.

Sd/-

(K.S.PUTTASWAMY) 18/3/71
VICE CHAIRMAN.

Sd/-

(L.H.A. REGO) 10-3-70
MEMBER(A)

TRUE COPY

Re: Under sealed of
DEPUTY CHAIRMAN (JDL) 13/3
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE