

REGISTERED

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Commercial Complex (BDA)
Indiranagar
Bangalore - 560 038

Dated : 25 OCT 1988

APPLICATION NO.

1519 to 1531

/88(F)

W.P. NO.

Applicant(s)

Shri M.A. Parthasarathy & 12 Ors
To

1. Shri M.A. Parthasarathy
2. Smt S. Lakshmi
3. Smt A. Rosaline

(Sl Nos. 1 to 3 -

Junior Supervisors
Office of the Director of Census
Operations in Karnataka
21/1, Mission Road
Bangalore - 560 027)

4. Shri P.K. Gopinath Kaimal
5. Smt R. Mangalam
6. Smt C.P. Chandrika Devi
7. Smt Pennamma Abraham
8. Smt H.A. Geetha

(Sl Nos. 4 to 8 -

Operators
Office of the Director of Census
Operations in Karnataka
21/1, Mission Road
Bangalore - 560 027)

Respondent(s)

V/s The Director of Census Operations in
Karnataka, Bangalore & 2 Ors

9. Smt H.S. Girija
10. Smt B.R. Indumathi
11. Smt K.S. Lalithamma
12. Smt N. Shanthakumari
13. Shri S. Krishna Rao

(Sl Nos. 9 to 13 -

Computers
Office of the Director of Census
Operations in Karnataka
21/1, Mission Road, Bangalore - 560 027)

14. Shri S. Ranganatha Jeja
Advocate
36, 'Vagdevi'
Shankarapuram
Bangalore - 560 004

15. The Director of Census Operations
in Karnataka
21/1, Mission Road, Bangalore - 560 027

16. The Registrar General of India (Census)
2/A, Mansingh Road
New Delhi

17. The Joint Director of Census Operations
in Karnataka
21/1, Mission Road, Bangalore - 560 027

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(s) on 14-10-88.

18. Shri M. Vasudeva Rao
Central Govt. Sng Counsel
High Court Building
Bangalore - 560 001

SECTION OFFICER

RECEIVED
(JUDICIAL)

Encl : As above

CENTRAL ADMINISTRATIVE TRIBUNAL: BANGALORE

DATED THIS THE 14TH DAY OF OCTOBER, 1988.

PRESENT:

Hon'ble Sri. L.H.A. Rego,

.. Member(A)

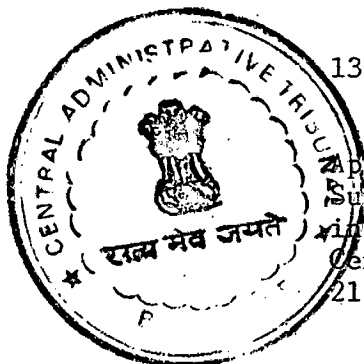
APPLICATIONS NUMBERS 1519 TO 1531, OF 1988

1. M.A. Parthasarathy,
S/o M.N. Acharya,
Aged about 42 years,
Junior Supervisor.
2. S. Lakshmi,
W/o Venkatesh,
Aged about 39 years,
Junior Supervisor.
3. P.K. Gopinath Kaimal,
S/o Karmakaram P,
Aged about 41 years,
Operator.
4. H.S. Girija,
D/o H. Seetharamarao,
Aged 41 years, Computer.
5. B.R. Indumathi,
W/o C. Ethirapalu, Aged 41 years,
Computer.
6. K.S. Lalithamma,
W/o K.N. Gopal Krishna,
Aged 41 years, Computer.
7. R. Mangalan,
W/o N.M., Aged 39 years,
Operator.
8. N. Shanthakumari,
W/o B. Subramani, Aged 38 years,
Computer.
9. C.P. Chandrika Devi,
Major, Operator.
10. A. Rosaline,
Jr. Supervisor, Major.
11. Ponnamma Abraham,
Major, Operator.
12. H.A. Geetha,
Major, Operator.
13. S. Krishna Rao,
Aged 41 years,
S/O T. Subbarao, Computer.

Applicants 1 to 13 are Junior
Supervisors/Computers employed
in the office of the Director of
Census Operations in Karnataka,
21/1 Mission Road, Bangalore-27.

.. Applicants.

(By Sri S. Ranganath Jois, Advocate)



1. The Director of Census Operation
in Karnataka, No.21/1 Mission Road,
Bangalore-27.
2. The Registrar General of India,
New Delhi-110 001.
3. The Joint Director of Census
Operations in Karnataka, No.21/1, Mission Road, Bangalore-27./
Bangalore-27. .. Respondents.

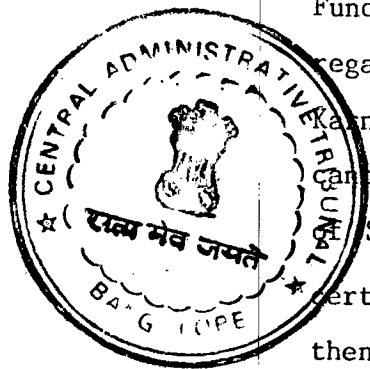
(By Sri M.Vasudeva Rao, ACGSC)

This application having come up for hearing this day, Tribunal made the following:

ORDER

The thirteen applicants herein, have directly challenged the impugned orders dated 27-10-1987 (Annexure-D) and 22-7-1988 (Annexure-J), as also Order dated 8-2-1988 (Annexure-E)(impliedly), passed by Respondent ('R')-3 and prayed that they be declared as, arbitrary, illegal and violative of Articles 14 and 16(1) of the Constitution. They have further prayed for a direction to the respondents, not to reduce their emoluments which they were drawing, as on the date of issue of the Orders on 27-10-1987 (Annexure-D) but to restore and continue the same, without effecting any recovery as ordered by R-3 on 8-2-1988 (Annexure-E). As the issues raised in these applications are alike, they are proposed to be disposed of, by a common order.

2. The following salient facts, bring the case into focus. On 10-12-1982 (Annexure-A) and 13-11-1985, R-1 had issued orders under Fundamental Rule ('FR') 22-C, stepping up the pay as Computers, in regard to certain employees in the Directorate of Census Operation, Karnataka ('Directorate' for short) inclusive of the respective applicants in this case. Those employees were promoted from the posts of Statistical Assistants (in the then pay scale of Rs.260-400) in certain vacancies, in the next higher grade of Computers (in the then pay scale of Rs.330-560), on an ad hoc basis, for Sample Registration Scheme ('SRS') work, for which, the willingness of the eligible Statistical Assistants was ascertained in writing. It learnt that the senior Assistant Compilers, did not opt for ad hoc appointment, in the above posts of Computers. As a result, their juniors who were willing, were given ad hoc promotion as Computers.



3. The Internal Audit Party, Ministry of Home Affairs (Census), Government of India, however, in the course of the inspection of accounts, of the above Directorate in July, 1987, for the year 1986-87, noticed, that the stepping up of pay ordered by R-1, by his Memos dated 10-12-1982 (Annexure-A) and 13-11-1985, under FR 22-C, was erroneous and therefore directed R-1, to cancel the aforesaid two memos and take consequential action. Accordingly, R-3 on behalf of R-1, by his impugned Memos 27-10-1987 (Annexure-D) and 8-2-1988 (Annexure E) cancelled the above two Memos, with a direction, that the pay of the employees affected thereby, would be regulated in terms of the Central Civil Services (Revised Pay) Rules, 1986 ('1986 Rules' for short) as advised by the said Internal Audit Party and the overpayment recovered from the employees concerned.

4. Aggrieved, the applicants 1, 2, 8 and 10 herein, among one other, filed Applications Nos. 305 to 309 of 1988 (Annexure-F) before this Bench of the Central Administrative Tribunal, in which the following order was passed, on 30-3-1988 (Annexure-F):

"5. I am, therefore, satisfied that the impugned orders are not sustainable in law and the same are accordingly set aside. This is without prejudice to the right of the respondents, to take any further action if they may deem fit in the light of the foregoing and in accordance with law.

6. The application is disposed of on the lines indicated above. No order as to costs."

5. In pursuance of the above order of this Tribunal, R-3 issued a notice to the concerned employees, including the applicants, on 28-4-1988 (Annexure-C), as to why the aforesaid two Memos dated 10-12-1982 and 13-11-1985, should not be cancelled and their pay refixed according to the 1986 Rules. The applicants state, that they sent a reply thereto, a specimen of which is at Annexure-H. They allege, that R-3 on behalf of R-1, without giving due consideration to their reply and by misinterpreting the provisions of FR 22-C, rejected their representation, by his order dated 22-7-1988 (Annexure-J and other respective Annexures). Aggrieved, the applicants have come before this Tribunal for redress.

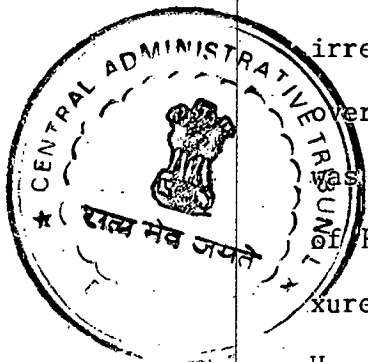


6. Sri S.Ranganatha Jois, learned counsel for the applicants, appearing on behalf of his senior Sri H.Subramhanya Jois, contended that the aforesaid impugned orders are arbitrary and are violative of the principles of natural justice, as also of Articles 14 and 16(1) of the Constitution, as his clients were not afforded an opportunity to explain their case, before issue of Annexures D and E, which resulted in civil consequences to them, and that the said orders contravene the provisions of FR 22-C, which were correctly applied, when Annexure-A was issued by R-1, on 10-12-1982, stepping up the pay of his clients. He, therefore, urged, that the applicants deserved the reliefs prayed for.

7. The respondents have filed their reply, countering the application.

8. Sri M.Vasudeva Rao, learned counsel for the respondents pointed out with vehemence, that even though the applicants were given an opportunity, to volunteer themselves for ad hoc promotion, in the vacancies in question, in the grade of Computers in the SRS, for reasons best known to them, they declined this offer, in view of which, they could have no legitimate claim for stepping up of pay, on par with their juniors, who willingly accepted the opportunity, despite arduous work involved in the field and readily offered their services to the Directorate, in an important census activity as the SRS.

9. Sri Rao further clarified, that the provisions of FR 22-C were, to begin with, erroneously applied in ~~order of~~ Annexure-A, as detected by the Internal Audit Party, in the course of inspection of accounts of the Directorate, which had rightly advised, that this irregularity be rectified, which naturally resulted in recovery of overpayment made to the applicants. This recovery, he asserted, was made by an order passed on 22-7-1988 (Annexure-J) by R-3, on behalf of R-1, after giving due notice to the applicants on 28-4-1988 (Annexure-G) and taking into account their representations thereon. He stressed, that this was done in strict compliance with the directions of this Tribunal, in Applications Nos. 305 to 309 of 1988, given on 30-3-1988 (Annexure-F).



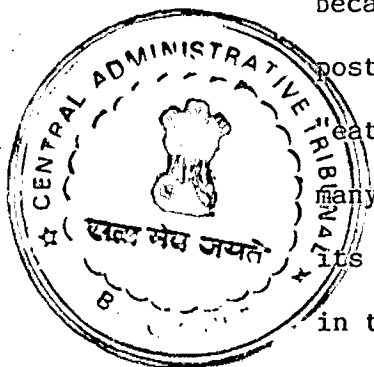
10. According to Sri Rao, the provisions of FR 22-C, did not apply to the applicants at all, as among other things, the anomaly in pay between the applicants and their juniors, did not arise, as a result of direct application of the provisions of the said Rule, as the juniors were promoted as Computers in the SRS, earlier than the applicants. In the end, Sri Rao urged, that the applications were wholly without merit and therefore, deserved to be rejected.

11. I have given the most anxious consideration to the rival pleadings and have also carefully examined the relevant material placed before me. In fact, by virtue of the order passed by this Tribunal on 30-3-1988 - vide: para 4 above - the impugned orders passed earlier by R1, on 27-10-1987 (Annexure-D) and 8-2-1988 (Annexure-E), were set aside then itself. Only the impugned order dated 22-7-1988 (Annexure-J) therefore, survives for consideration, in this application.

12. I am satisfied, that the respondents have duly complied with, with the orders of this Tribunal passed on 30-3-1988, in Applications Nos. 305 to 309 of 1988, before issuing the impugned Memo dated 22-7-1988 (Annexure-J) and that reasonable opportunity was given to the applicants, on 28-4-1988 (Annexure-G), to explain their case. There is thus no truth in the contention of the applicants, that they were denied natural justice.

13. Articles 14 and 16(1) of the Constitution, are not attracted because, the applicants on their own, did not volunteer to accept the posts of Computers, offered to them in the SRS. They cannot, therefore, "eat the cake and have it too"! The respondents have averred, that many seniors did not opt for this promotion, presumably because of its ad hoc nature and of the strenuous work involved in the field, in the remote interior.

14. As regards the contention, that the anomaly in pay between the applicant and their juniors, ought to have been rectified with reference to FR 22-C, it is pertinent to reproduce below, the instruc-



LA

tions of the Government of India ('GOI'), Ministry of Finance in their O.M. dated 4-2-1966 appearing at GOI Order No.(10), under FR 22-C, on page 75 of Swamy's Compilation of Fundamental Rules and Supplementary Rules - Part I General Rules (Eighth Edition):

"(10) Removal of anomaly by stepping up of pay of Senior on promotion drawing less pay than his junior. -

(a) As a result of application of F.R.22-C. - In order to remove the anomaly of a Government servant promoted or appointed to a higher post on or after 1-4-1961 drawing a lower rate of pay in that post than another Government servant junior to him in the lower grade and promoted or appointed subsequently to another identical post, it has been decided that in such cases the pay of the senior officer in the higher post should be stepped up to a figure equal to the pay as fixed for the junior officer in that higher post. The stepping up should be done with effect from the date of promotion or appointment of the junior officer and will be subject to the following conditions, namely:-

- (a) Both the junior and senior officers should belong to the same cadre and the posts in which they have been promoted or appointed should be identical and in the same cadre;
- (b) The scales of pay of the lower and higher posts in which they are entitled to draw pay should be identical;
- (c) The anomaly should be directly as a result of the application of FR 22-C. For example, if even in the lower post the junior officer draws from time to time a higher rate of pay than the senior by virtue of grant of advance increments, the above provisions will not be invoked to step up the pay of the senior officer.

The orders refixing the pay of the senior officers, in accordance with the above provisions shall be issued under F.R 27. The next increment of the senior officer will be drawn on completion of the requisite qualifying service with effect from the date of re-fixation of pay."

15. It is clear from the above GOI instructions, that they do not govern the case of the applicants, primarily on two grounds viz.,

- (1) that the juniors in the lower grade were promoted to the identical post earlier (emphasis added) than the applicants and
- (2) the anomaly was not as a direct result of the application of FR 22-C.

16. Sri Ranganath Jois rightly resiled from this contention in the course of the hearing, when the above position was brought to his notice. The applicants have therefore no legs to stand in relation to FR 22-C.

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17. All all the contentions urged by Sri Jois fail, these applications are dismissed as bereft of merit, with no order, however, as to costs.

Sd/-
MEMBER(A) 14.12.88

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12/25/88
SECTION OFFICER
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Commercial Complex(804)
Indiranagar
Bangalore - 560 038

Dated 20 FEB 1989

REVIEW APPLICATION NO (S) 5 to 7 /89
IN APPLICATION NOS. 1523, 1524 & 1526/88(F)
W.P. NO (S)

Applicant (s)

Respondent (s)

Smt B.R. Indumathi & 2 Ors
To

V/s

The Joint Director of Census Operations in
Karnataka, Bangalore & another

1. Smt B.R. Indumathi
2. Smt K.S. Lalithamma
3. Smt N. Shantakumari

(Sl Nos. 1 to 3 -

Computers
Office of the Joint Director of
Census Operations in Karnataka
21/1, Mission Road
Bangalore - 560 027)

4. Shri S. Ranganatha Jois
Advocate
36, 'Vagdevi'
Shankarapuram
Bangalore - 560 004

Subject : SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith a copy of ORDER ~~STAY / INTERIM ORDER~~
passed by this Tribunal in the above said ^{Review} application(s) on 16-2-89.


DEPUTY REGISTRAR
(JUDICIAL)

Encl : As above

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: BANGALORE

DATED THE SIXTEENTH DAY OF FEBRUARY, 1989.

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

REVIEW APPLICATION NOS. 5 TO 7/1989

1. Smt. B.R. Indumathi
W/o. C. Ethirapalu
Aged about 41 years.
 2. Smt. K.S. Lalithamma
W/o. K.N. Gopalakrishna
Aged 41 years.
 3. Smt. N. Shantakumari
W/o. B. Subramani
Aged 38 years
- .. Applicants

(All are working as Computers in
the office of the Joint Director
of Census Operations in Karnataka,
No.21/1, Mission Road, Bangalore-7)

(Shri S. Ranganatha Jois, Advocate)

Vs.

1. The Joint Director of Census
Operations in Karnataka
No.21/1, Mission Road
Bangalore-27.
2. The Registrar General of India
New Delhi.

These review applications
having come up for hearing before this Tribunal
today, Hon'ble Shri L.H.A. Rego, Member (A),
made the following:

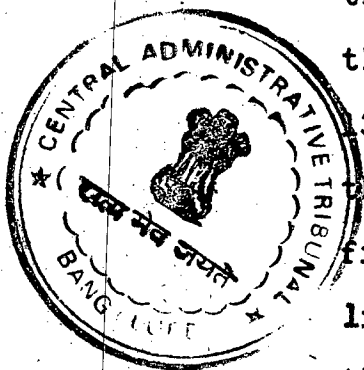
ORDER

In these review-applications,
the review-applicants, pray for recall of the
Order passed by this Tribunal in the Original
Applications Nos: 1523, 1524 and 1526 of 1988
decided on 14.10.1988, ^{de review} of the same and grant of
consequential benefits.



2. The factual matrix⁴² of the case, has already been narrated in the original applications, the primal contention of the applicants being, that their emoluments as originally fixed on 13.11.1985 but later reduced by the Director of Census Operations, Karnataka, Bangalore, in the grade of Computers in the Directorate of Census Operations, Bangalore, be restored.

3. The main ground advanced in the review-application, by Shri Ranganatha Jois, learned counsel for the review-applicants, is that, this Tribunal proceeded on an erroneous presumption, that their pay was wrongly stepped-up under the Fundamental Rule (FR) 22-C. He further submitted, that the respondents had not stated any reason, as to why the pay so stepped up, was liable to be cancelled and that the details of the audit objection, which was the basis for annulling the pay so fixed, were not made known to the applicants, which was violative of the principles of natural justice. He, therefore, pleaded in the light of the above, that the observation of this Tribunal, in para 3 of its decision, rendered on 14.10.1988, in the original applications, prima facie, suffered from a patent error and the same was therefore, liable to be reviewed. He also contended, that the subsequent conversion of ad hoc promotions, granted to those, junior to the review-applicants,



in the grade of Computers, as regular, was contrary to the principles of estoppel.

4. These review-applications are seen to have been filed before the Tribunal on 25.1.1989 i.e., after a lapse of 103 days from the date, the decision was rendered by this Tribunal on 14.10.1988. There is thus a fairly long delay of 72 days according to Rule 17 of the Central Administrative Tribunal (Procedure) Rules, 1987, in filing the applications before this Tribunal. The applicants however have not filed any application for condonation of this delay, in accordance with Section 21 of the Administrative Tribunals Act, 1985.

5. It is clear from the foregoing, that the Review Applications are clearly hit by bar of limitation.

6. Even then, with due deference to the determined effort made by Shri Jois, to plead the case on his clients on merits, I have examined the matter even from that angle. The very tenor and the trend of the review-applications reveal, that the review-applicants desire that their case be re-examined by this Tribunal, by way of appeal over its decision in the original applications, by reapp^ur^aising evidence and by even taking into account fresh grounds now urged before me and a decision arrived at in their fa^uour, in modification of the earlier one. This is patently impermissible, according to Sec. 114



read with Order 47 Rule 1, of the Code of Civil Procedure, particularly when Shri Jois has not been able to point out any patent error of fact/law on the face of the record, so as to warrant a proper judicial review.

7. In the result, I find that the review-applications are wholly meritless and therefore, reject the same in limine.



Sd/-

(L.H.A. REGO) 16.2.1987
MEMBER(A)

mr.

TRUE COPY

B.V. Venkatesh
DEPUTY REGISTRAR (JDL) 20/2/87
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE