

CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH

Subject : PARTICULARS OF ORDERS OF CAT, BANGALORE CHALLENGED  
IN THE HON'BLE SUPREME COURT OF INDIA - REGARDING.  
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1. The OA/TA/CCP No. of the case appealed : 1327 To 1332/86 (T) etc
2. Name of Parties:  
(a) Applicant(s)/P  
Petitioners : M. Nanjunda Swamy and others  
(b) Respondent(s) : Accountant General (Accounts)  
Bangalore, Karnataka & others
3. Nature of case in brief : Promotion and parity in pay scales.
4. Name of the Bench which passed the impugned orders: BANGALORE BENCH
5. Whether the case was :-  
(a) Allowed : Partly Allowed  
(b) Disallowed :  
(c) Date of order : 7/8-7-87  
(d) Bench comprising of : Hon Justice K.S. Puttaswamy - VC  
Hon Member(A) Sh. L.H.A. Regd.
6. SLP/Civil Appeal No in the Hon'ble Supreme Court : 772 To 777/89 etc
7. Parties' Name before the Hon'ble Supreme Court:-  
(a) Applicant(s)/  
Petitioners : The Accountant General  
(Accounts) Bangalore & 3 others  
(b) Respondents : M. Nanjunda Swamy & others  
(c) Date of Interim Order :  
(d) Nature of Order in brief (may contain the order if not too long): Bangalore Bench order set aside. CAS Allowed copy of the SC order dated 4.2.92 enclosed Decree also received  
set aside  
(e) Whether operation of the order of the Tribunal stayed/ restricted or modified:

Copy

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

Certified to be a

Appellate Registrar (Judg.)

Supreme Court of India

CIVIL APPEALS NOS. 1783-84 OF 1990

17/2/1992

UNION OF INDIA AND ORS.

.....Appellants

Vs.

THE SECRETARY, MADRAS CIVIL  
AUDIT & ACCOUNTS ASSOCIATION  
AND ANR. ETC.

.....Respondents

365460

(With C.A. Nos. 772-777/89, 1085-90/89, 535-40/89,  
705-725/89, 945-74/89, 1043-63/89, 1024-42/89, 733-38/89,  
739-747/89, 726-37/89, 997-999/89, 3117/89, 1064-84/89,  
1000-23/89, 975-96/89, 3623-25/88, 3698-3704/88,  
3705-14/88 & 3678/89).

JUDGMENT

K. JAYACHANDRA REDDY, J.

All these appeals pursuant to the special leave granted are filed by the Union of India, the Comptroller & Auditor General and the Principal Accountant General. The only question that arises for consideration is whether the benefit under Office Memo (O.M.) dated 12th June, 1987 issued by the Government of India, Ministry of Finance, Department of Expenditure should be extended to the members of the Accounts Wing of the Indian Audit and Accounts Department ("I.A. & A.D." for short) with effect from 1.1.86 as in the case of Audit Wing or whether it should be from 1.4.87 as indicated in the said Office Memo? Several of the employees belonging to the Accounts Wing filed petitions and the Bangalore Bench of Central Administrative Tribunal ("CAT" for short) held that they are entitled to the benefit with effect from

dates of implementation of the recommendations of the Pay Commission in respect of the members of the Accounts wing and whether such an implementation offends Articles 14 and 16 in any manner? It is not in dispute that after the report of the Pay Commission the Government considered the matter and accepted the substantial part of the recommendations and gave effect to the revised scales of pay with effect from 1.1.86. It is clearly indicated in the report that in regard to recommendations in other matters the Government will have to take specific decisions to give effect to them from a suitable date keeping in view all the relevant aspects including the administrative and accounting work. The second part of the recommendations relates to treatment of scales of pay of Rs.1400-2000 and Rs. 2000-3200 as functional grades requiring promotion as per normal procedure and also the number of posts to be placed in these scales of pay. These recommendations clearly fall in the category of other recommendations and the Pay Commission itself has indicated that in respect of such recommendations the Government will have to take specific decisions to give effect from a suitable date. The Government, therefore, had to take the decision in respect of number of posts to be placed in these scales of pay. In this context it is relevant to refer to paragraph 4 of the Office Memo dated 12.5.87. It reads as under:

"4) The question regarding number of posts to be placed in the higher scales of pay has been under the consideration of the Government and it has now been decided that the ratio of number of posts in higher and lower scales in the Organised Accounts cadres as well as in Accounts wing of the

IA & AD may be as follows:-

i)Section Officer (SG)	Rs.2000-6-2300-EB-75-3200	80%
ii)Section Officer	Rs.1640-50-2600-EB-75-2900	20%
iii)Senior Accountant	Rs.1400-40-1600-50-2300-EB- 60-2600	80%
iv)Junior Accountant	Rs.1200-30-1560-EB-40-2040	20%

The designations in different Organised Accounts cadres may be different. In such cases also the pay structure on these lines may be decided."

The Government have to necessarily frame rules for appointment to these functional grades and the Government decided that those who have passed the Graduate examination and who have completed three years as Section Officer could be placed in the category of the persons entitled to the scale of pay of Rs.2000-3200 and the same post was redesignated as Assistant Accounts Officer which post was not there previously. A Circular dated 17.8.87 makes this aspect clear. It can be seen that the category of officers who have to be placed in the functional grade had to be decided by the Government and accordingly the Government took the decision in the year 1987. Therefore it is not correct to say that these officers who were subsequently placed in the functional grade belong to the same group who were entitled to the respective scales in their own right on 1.1.86 itself. It must be borne in mind that in order to enable the identification of posts and fitment of proper persons against them the Government had to take a decision. We have already noted that the recommendations of the Pay Commission deal with parity of scales of pay of the staff in I.A. & A.D. and other Accounts organisations after holding that Audit and Accounts wings functions are complementary. But the Pay Commission also pointed out that the posts in the scales of pay of Rs.1400-2000 and Rs.2000-3200 should be treated as functional

grades requiring promotion as per normal procedure and it was left to the Government to decide about the number of posts to be placed in these scales. Paragraph 4 of the Office Memo dated 12.5.87 deals with the later part of the recommendations and clearly provides for the identification of the posts carrying somewhat higher responsibilities and duties and for an exercise to be undertaken for fitting the senior and suitable persons against these posts. The Government after due consideration decided the issue. The Circular dated 17.8.87 clearly shows that some of the posts are identified as belonging to the higher functional grade and accordingly issued instructions in conformity with its Office Memo dated 12.6.87 and accordingly they were given the benefit with effect from 1.4.87.

One of the submissions of the learned counsel for the respondents is that the persons allocated to the Accounts wing, who possessed similar qualifications before and after entry into the Department, were performing duties of same nature, as those allocated to the Audit wing, and that being so, allowing them lower scales of pay than those allowed to the Audit wing was violative of Articles 14 and 16 of the Constitution. It is true that all of them before restructuring belonged to one Department. But that by itself cannot be a ground for attracting Articles 14 and 16 of the Constitution. As already mentioned the new posts have to be identified as indicated by the Pay Commission and thereafter the implementation of the recommendations in respect of higher scales can be done. The Full Bench as well as the Bangalore Bench of CMT have not correctly interpreted the scope

:11:

of the recommendations. A combined reading of the Pay Commission Report and the Office Memo makes it abundantly clear that the second set of the recommendations could only be given effect to after identifying these posts. For that purpose the whole matter is required to be examined and the necessary decision has to be taken. In this context it is also necessary to note that the post of Assistant Accounts Officer was not in existence earlier which is now brought under a functional grade. For that purpose necessary rules have to be framed prescribing the eligibility etc. and the senior Accountants who have completed three years' regular service in the grade are upgraded to this post. It is evident that all this could have been done only in the year 1987 and in the said organised Accounts office higher scales of pay were given with effect from 1.4.87 i.e. from the beginning of the financial year. We are unable to see as to how the respondents can insist that they must be given higher scales with effect from 1.1.86. This claim is obviously based on the ground that some of the Officers belonging to the Audit wing were given scales with effect from 1.1.86. But it must be borne in mind that they were eligible on that date for the higher scales. Likewise some of the Officers of the Accounts wing who were eligible for higher scales were also given. But with reference to the second part of the recommendations categories of posts in the functional grades in the Accounts wing had to be identified and created. The respondents who got that benefit of being upgraded now cannot claim that they must also be given same scales like others in respect of whom the recommendations of the Pay Commission were

given effect to with effect from 1.1.86. There is a clear distinction between the two categories. Therefore, the submission that giving two different dates of implementation of the recommendations in respect of these two categories of personnel of the Accounts wing and the Audit wing offends Articles 14 and 15, is liable to be rejected.

The Full Bench of CAT further held that I.A. & A.D. consists of two wings and both should get the same scales of pay and there is nothing in the report of the Pay Commission to indicate that these were to be separated and dealt with separately. It also held that bifurcation was done only for the purpose of specialisation and efficiency and not to create two separate organisations. Relying on this and other similar observations made by the Tribunal, the learned counsel submitted that since all of them do the same work they should be treated alike and the principle of equal pay for equal work is very much attracted. We see no force in this submission. It must be noted that the Pay Commission Report clearly indicated that after bifurcation certain posts in the Accounts wing should be declared to be brought into the functional grades and thereafter the higher scales of pay should be paid to the officers fitted in such grades. It may be noted that before bifurcation all of them belonged to one Department and as such all those officers of both the wings who were entitled to the scales of pay from 1.1.86, have been granted the same with effect from that date but with regards the posts that were to be identified and brought into the functional grades in future, the higher scales of pay cannot be made applicable retrospectively i.e. with effect from 1.1.86. It

cannot be said that on that date the posts identified subsequently were also in existence. In such a situation the principle of equal pay for equal work is not attracted as on 1.1.86.

In All India Station Masters' and Assistant Station Masters' Association & Others v. General Manager, Central Railways and Others (1960)2 S.C.R.311 this Court held as under:

"It is clear that, as between the members of the same class, the question whether conditions of service are the same or not may well arise. If they are not, the question of denial of equal opportunity will require serious consideration in such cases. Does the concept of equal opportunity in matters of employment apply, however, to variations in provisions as between members of different classes of employees under the State? In our opinion, the answer must be in the negative. The concept of equality can have no existence except with reference to matters which are common as between individuals, between whom equality is predicated. Equality of opportunity in matters of employment can be predicated only as between persons, who are either seeking the same employment, or have obtained the same employment."

Proceeding further the Court held thus:

"There is, in our opinion no escape from the conclusion that equality of opportunity in matters of promotion, must mean equality as between members of the same class of employees, and not equality between members of separate, independent classes."

The same principle was later confirmed in the case of Kishori Mohanlal Rakshi v. Union of India, A.I.R. 1962 S.C.1139.

The above ratio has been followed in Unikat Sankunni Menon v. The State of Rajasthan (1967)3 S.C.R. 430 wherein this

Court observed as under:

"It is entirely wrong to think that every one, appointed to the same post, is entitled to claim that he must be paid identical emoluments as any other person appointed to the same post, disregarding the method of recruitment, or the source from which the Officer is drawn for appointment to that post. No such equality is required either by Art.14 or Art.15 of the Constitution."

In State of Punjab v. Joginder Singh (1963) Suppl. 2 S.C.R.169, this question has been considered and it is held that the question of denial of equal opportunity could arise only as between members of the same class and that it was open to the Government to constitute two distinct services of employees doing the same work but subject to different conditions of service. The Court also concluded that the assumption that equal work must receive equal pay was not correct and that it was also not correct to say that if there was equality in pay and work there must be equality in conditions of service.

Having given our earnest consideration we are unable to agree with the view taken by the Full Bench of CMT that the principle of equal pay for equal work is attracted irrespective of the fact that the posts were identified and upgraded in the year 1987. There is no dispute that after such upgradation, officers in both the wings who are doing the equal work are being paid equal pay. But that cannot be said to be the situation as well on 1.1.86 also. The learned counsel, however, submitted that the recommendations of the Pay Commission should be accepted as a whole in respect of all the categories of employees. In this context he relied on two decisions of this Court. In Purshottan

Lal and Others v. Union of India and another (1973) 1 S.C.C. 651  
a question came up whether the report of the Second Pay Commission  
did not deal with the case of those petitioners. It was held  
thus:

"Either the Government has made reference  
in respect of all Government employees or  
it has not. But if it has made a  
reference in respect of all Government  
employees and it accepts the  
recommendations it is bound to implement  
the recommendations in respect of all  
Government employees. If it does not  
implement the report regarding some  
employees only it commits a breach of  
Articles 14 and 16 of the Constitution.  
That is what the Government has done as  
far as these petitions are concerned."

In P. Parameswaran and Others v. Secretary to the Government of  
India (1987) Suppl. S.C.C. 18 in a short judgment this Court  
observed that because of the administrative difficulties the  
Government cannot deny the benefit of the revised grade and scale  
with effect from January 1, 1973 as in the case of other persons.

There is no dispute that in the instant case the terms  
of reference of Pay Commission applied to all the categories of  
Government servants. But the question is as to from which date  
the other category referred to above namely Assistant Accounts  
Officer etc. should get the higher scales of pay. Identification  
of these posts and the upgradation cannot be treated as mere  
administrative difficulties. The implementation of the  
recommendations of the Pay Commission according to the terms  
thereof itself involved this exercise of creation of posts after  
identification which naturally took some time. Therefore the above  
decisions relied upon by the learned counsel are of no help to

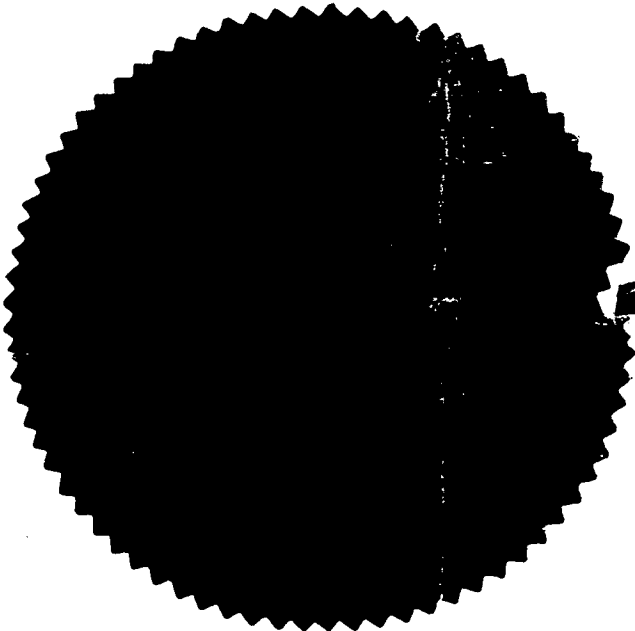
the respondents.

For all the above reasons we set aside the orders questioned in all these Civil Appeals and accordingly allow them. In the circumstances of the cases, there will be no order as to costs.

.....J.  
(LALIT MOHAN SHARMA)

NEW DELHI  
FEBRUARY 4, 1992

.....J.  
(K. JAYACHANDRA REDDY)



"SEALED IN MY PRESENCE"  
17/1/92

4th February, 1992.

CORAM:

HON'BLE MR. JUSTICE LALIT MOHAN SHARMA  
HON'BLE MR. JUSTICE K.JAYACHANDRA REDDY

For the Appellants: Mr.K.T.S.Tulsi, Additional Solicitor  
General of India,  
Mr.N.N.Goswamy, Senior Advocate,  
(M/s.A.Subba Rao, C.V.S.Rao and  
P.Parmeswaran, Advocates withthem).

The Appeals above-mentioned along with other connected matters being called on for hearing before this Court on the 11th, 12th, 13th and 17th days of December, 1991, UPON perusing the record and hearing counsel for the **Appellants herein,** the Court took time to consider its Judgment and the appeals being called on for Judgment on the 4th day of February, 1992, THIS COURT DOTH in allowing the appeals  
ORDER:

1. THAT the Judgment and Order dated the **30th March, 1988** of the Central Administrative Tribunal, Bangalore Bench, Bangalore in **Application Nos.436 to 456 of 1988** be and **is** hereby set aside and **Application Nos.436 to 456 of 1988** filed by the respondents herein before the aforesaid Central Administrative Tribunal be and **are** hereby dismissed;
2. THAT there shall be no order as to costs of **these** appeals in this Court;

383918

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

Certified to be a true copy

Assistant Registrar (Judl.)

Supreme Court of India

CIVIL APPEAL NO **S. 705 TO 725**

OF **1989**

(Appeals by special leave from the Judgment and Order dated the **30th March, 1988** of the Central Administrative Tribunal, Bangalore Bench, Bangalore in **Application Nos. 436 to 456 of 1988**).

1. The Accountant General,  
(Accounts and Entitlements)  
Karnataka, Bangalore.
2. The Comptroller and Auditor  
General of India, No.10,  
Bahadur Shah Zafar Marg,  
New Delhi.
3. The Government of India,  
by its Secretary,  
Ministry of Finance,  
Department of Expenditure,  
New Delhi.

..Appellants.

Versus

1. Kum.K.Vaidehi
2. Smt.M.N.Saroja
3. Smt.V.Vathsala
4. Shri N.Subramahanya
5. Shri Syed Abdul Hafeez
6. Smt.A.Ananthamani
7. Smt.B.K.Mani
8. Smt.D.Dorothy Sushila
9. Shri M.King Das
10. Smt.Naareen Sultana
11. Kn.G.Sarojamma
12. Shri P.R.Venkatesh
13. Smt.A.Andelamma
14. Shri N.Lakshman Singh
15. Shri B.S.Raghvendra Rao
16. Shri T.V.Chelvaraj
17. Shri S.Sridhara Murthy
18. Shri R.S.Basappa
19. Shri Sambukumar V.R.
20. Shri R.Seetharaman
21. Shri G.Upendran

(All the respondents are working in the  
Office of the Accountant General (A&E)  
Karnataka, Bangalore-1).

..Respondents.

: 3 :

AND THIS COURT DOETH FURTHER ORDER that this ORDER  
be punctually observed and carried into execution by all  
concerned;

WITNESS the Hon'ble Shri Madhukar Hiralal Kania, Chief  
Justice of India, at the Supreme Court, New Delhi, dated  
this the 4th day of February, 1992.

*sdl*  
(J.K.RAWAL)  
ADDITIONAL REGISTRAR.

RM

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO  
S.705 TO 725 OF 1989.

The Accountant General,  
(Accounts and Entitlements)  
Karnataka, Bangalore and  
2 Ors. ..Appellants.

Versus

**Kum.K.Vaidehi & 20 Ors. ..Respondents.**

CENTRAL ADMINISTRATIVE TRIBUNAL,  
BANGALORE BENCH, BANGALORE.

**Application Nos.436 to 456 of 1988.  
DECREE ALLOWING THE APPEALS WITH  
NO ORDER AS TO COSTS.**

Dated this the 4th day of February, 1992.

*AS/2/4/5v*

**Mr.P.Parmeewaran,  
Advocate on record for the Appellants.**

Recd. With RPL No. 2905  
R/Lb. H. Shrivastava  
Shri Rao

dy. no. 184/J-II/92

10.6

D.Nos.4293-98/88 etc.

SUPREME COURT OF INDIA  
NEW DELHI.

Dated this the 29<sup>th</sup> May, 1992.

From: The Registrar (Judicial),  
Supreme Court of India,  
New Delhi.

To: The Registrar,  
Central Administrative Tribunal,  
Bangalore Bench,  
Bangalore.

CIVIL APPEAL NOS. 772 to 777, 1085 to 1090,  
535 to 540, 705 to 725, 945 to 974, 1043 to  
1063, 1024 to 1042, 733 to 738, 739 to 747,  
726 to 732, 997 to 999, 3117, 1064 to 1084,  
1000 to 1023, 975 to 996 of 1989, 3623 to  
3625, 3698 to 3704, 3705 to 3714 of 1988  
and 3678 of 1989.

The Account General (Accounts);  
Bangalore & 3 Ors. etc.etc.

..Appellants.

Versus

Mr. Nanjunda Swamy & 5 Ors. etc.etc.

..Respondents.

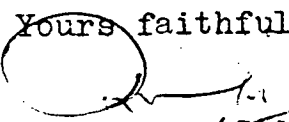
Sir,

In continuation of this Registry's letter of even number dated the 12th/17th February, 1992, I am directed to transmit herewith for necessary action a certified copy each of the Decree dated the 4th February, 1992 of the Supreme Court in the said appeals.

The Original Record in Civil Appeal Nos. 535 to 540 of 1989, 3117 of 1989 and 3678 of 1989 will follow.

Please acknowledge receipt.

Yours faithfully,

  
for Registrar (Judicial).

XXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXX

Others and O.A.85/89 - P.G.Jagdeeshwara Rao and Others  
Vs. AGA&E and Others respectively sent by this Registry  
may please be returned as early as possible.

Yours faithfully,

*(Signature)*

(N.RAMAMURTHY)  
for DEPUTY REGISTRAR (J).

Copy with a copy of the letter under reply with a copy  
each of the certified copy of the decrees dated 4.2.92  
of the Supreme Court for the relevant files namely

<u>O.A.Nos.</u>	<u>C.A.No.</u>
1. 1327 - 32/86	772-777/89
2. 28-33/88	1085-1090/89
3. 39-44/88	535-540/89
4. 436-456/88	705-725/89
5. 315-344/88	945-974/89
6. 526-546/88	1043-1063/89
7. 548-566/88	1024-1042/89
8. 632-637/88	733-738/89
9. 638-646/88	739-747/89
10. 647-653/88	726-732/89
11. 769-771/88	997-999/89
12. 949/88	3117/89
13. 283-303/88	1064-1084/89
14. 121-132/88 & R.A.29-40/88	1000-1023/89
15. 218-239/88	975-996/89
16. 4-6/88	3623-3625/88
17. 625-631/88	3698-3704/88
18. 253-262/88	3705-3714/88
19. 85/89	3678/89

for record.

*(Signature)*

(N.RAMAMURTHY)  
for DEPUTY REGISTRAR (J).

*Shilp  
of issue take thro' Des. Register  
R 24/7*

XXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXX

Dated 24 July, 1992.

File of A. Nos. 1327 to 1332/86(T)

To

The Registrar(Judicial),  
Supreme Court of India,  
New Delhi.

Sub: CIVIL APPEAL NOS. 772 to 777, 1085 to 1090,  
535 to 540, 705 to 725, 945 to 974, 1043 to  
1063, 1024 to 1042, 733 to 738, 739 to 747  
726 to 732, 997 to 999, 3117, 1064 to 1084,  
1000 to 1023, 975 to 996 of 1989, 3623 to  
3625, 3698 to 3704, 3705 to 3714 of 1988  
and 3678 of 1989.

The Accountant General(Accounts),  
Bangalore & 3 Ors. etc.etc.

...Appellants

Versus

Mr. Nanjunda Swamy & 5 Ors. etc. etc.

...Respondents.

Sir,

I am directed to refer to your letter  
D. Nos. 4293-98/88 etc. dated 29.5.92 with which certified  
copies each of the decree dated 4.2.92 of the Supreme  
Court in the above mentioned appeals were forwarded to  
this Registry and to say that the same is hereby acknow-  
ledged.

The original record in Civil Appeal Nos. 535 to 540/89  
3117/89 and 3678/89 pertaining to which this Registry's  
files O.A. Nos. 39 to 44/88 Smt. V. Chandra and 5 Others Vs.  
A.G.A & E and Others, O.A. 949/88 R.K. Kumar Vs. AGA&E and

*issued through Des. Register  
R 24/7/92*

...2/-