

CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH

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Commercial Complex(BDA)  
Indiranagar  
Bangalore - 560 038

Dated : 18 APR 1988

APPLICATION NO

47

/88(F)

W.P. NO.

Applicant

Shri S. Krishnamurthy

To

1. Shri S. Krishnamurthy  
Office Superintendent  
Office of the Chief Medical Officer  
Central Govt. Health Scheme  
21/2/2A, 9th Main, III Block West  
Jayanagar  
Bangalore - 560 011

2. Shri S.K. Srinivasan  
Advocate  
35 (Above Hotel Swagath)  
1st Main, Gandhinagar  
Bangalore - 560 009

3. The Chief Medical Officer  
Central Govt. Health Scheme  
21/2/2A, 9th Main, III Block West  
Jayanagar  
Bangalore - 560 011

4. The Director General of Health Services  
Central Govt. Health Scheme  
Nirman Bhavan  
New Delhi - 110 011

Respondent

V/s The Chief Medical Officer, CGHS, Bangalore  
& 2 Ors

5. The Secretary  
Ministry of Health  
Nirman Bhavan  
New Delhi - 110 011

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 the copy of ORDER/REMARKS/REMARKS  
passed by this Tribunal in the above said application on 4-4-88.

*PA Unsubscribed*  
DEPUTY REGISTRAR  
(JUDICIAL)

*Encl : As above*

CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE

DATED THIS THE 4TH DAY OF APRIL, 1988

Present: Hon'ble Shri Justice K.S. Puttaswamy, Vice-Chairman  
and  
Hon'ble Shri P. Srinivasan, Member (A)

APPLICATION NO. 47/88

Shri S. Krishnamurthy,  
Office Superintendent,  
O/o the Chief Medical Officer,  
Central Government Health Scheme,  
3rd Block, Jayanagar,  
Bangalore.

... Applicant.

(Shri S.K. Srinivasan, Advocate)

v.

1. The Chief Medical Officer,  
Central Government Health Scheme,  
Jayanagar, Bangalore.

2. The Director General of Health Services,  
Central Government Health Scheme,  
Nirman Bhavan, New Delhi.

3. The Secretary,  
Ministry of Health,  
Arogya Bhavan,  
New Delhi.

... Respondents.

(Shri M. Vasudeva Rao, C.G.A.S.C)

This application having come up for hearing to-day,  
Shri P. Srinivasan, Hon'ble Member (A) made the following:

ORDER

The applicant worked as a combatant Clerk in the I.A.F. from 21.9.1950 to 5.8.1968. Thereafter he was absorbed in civilian service as a Lower Division Clerk in the Regional Health Office, Bangalore. In 1975 he was transferred out of Bangalore and for personal reasons he resigned from service w.e.f. 31.8.1975.

Thereafter he represented to the authorities that he should be given appointment in the Central Government Health Service at Bangalore, for which he had applied



before his resignation. Eventually, he was given the appointment in CGHS in December 1975 and he took charge of the post of LDC in that office from 27.12.1975. He then applied for continuity of service ignoring the break between his resignation and his fresh appointment. In response to this representation the Director General Health Service (R2) passed an order dated 22.3.1977 allowing the applicant "as a special case" to count his previous service in the Regional Health Office from 12.9.1969 to 31.8.1975 for the purpose of pension but the interregnum shall not count and shall be treated as 'dies non'. On his fresh appointment in CGHS w.e.f. 27.12.1975 his pay was fixed at Rs.334/- in the scale of Rs.260-4-290-E8-6-326-8-390-10-400. Meanwhile, he was continuously representing that when fixing his initial pay on re-absorption in civilian service from 12.9.1969 he should have been given increments over the minimum of the scale equal to the number of years of service put in by him as combatant clerk. When these representations met with no reply, he filed an application before this Tribunal which was registered as A.No.1741/86. This application was disposed of by this Tribunal by order dated 1.5.1987 with a direction that a final and considered reply be given to the applicant to his representations. Thereafter the respondent passed an order on 30.10.87 fixing his initial pay w.e.f. 12.9.1969 by taking into account service rendered by him as combatant clerk in the I.A.F. In this manner his pay was fixed at Rs.151/- as on 12.9.69, <sup>by falling</sup> the date of next increment following on 12.9.1970. He was allowed to draw arrears of pay consequent on this



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refixation for the period 12.9.1969 to 31.8.1975.

However, the last portion of the order reads as follows:

"Since the service rendered by Shri Krishnamurthy in the Regional Office, Bangalore has been decided to be counted only for the purpose of pension, no pay protection will be allowed after joining in CGHS Bangalore from 27.12.1975."

It is this portion of the order which the applicant has challenged in this application.

2. Shri S.K. Srinivasan, learned Counsel for the applicant, submitted that when the respondents agreed to treat the resignation of the applicant w.e.f. 31.8.1975 as having been cancelled and also agreed to give him the benefit of his earlier service from 12.9.1969 to 31.8.1975 they should have also allowed protection of pay drawn by the applicant as on 31.8.1975 under the fresh order of pay fixation on his reappointment w.e.f. 27.12.1975. Instead he feared that the respondents would effect recovery from the applicant of the pay already drawn for the period 27.12.1975 onwards.

3. Shri M. Vasudeva Rao, learned Counsel for the respondents, rebuts the contention of Shri Srinivasan and submits that when the applicant was appointed on 27.12.1975 in CGHS he was informed that his earlier service would be counted only for pension and he agreed to this condition. Therefore, when the pay of the applicant for the period 12.9.1969



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to 31.8.1975 was refixed by the respondents it was clarified that the pay to be drawn by him on such refixation as on 31.8.1975 would not be protected when fixing his pay on his reappointment from 27.12.1975.

4. We have considered the contentions of rival counsel carefully. We feel that the contention of Shri Srinivasan that the applicant should get protection of pay to be drawn by him on 31.8.1975 under the fresh orders of pay fixation ~~and his pay should be protected when fixing his pay on reappointment on 27.12.1975 is not tenable.~~ When he was reappointed at his own request after his earlier resignation, no doubt on humanitarian considerations, the respondents, had clearly stated that his earlier service before resignation would count only for pension and the applicant had agreed to this condition. We would, therefore, reject this claim. Having said so much we must also refer to Shri Srinivasan's apprehension that the applicant's pay as on 27.12.1975 which was fixed at Rs.334/- by order dated 30.8.1987 may be brought down to a lower fixing as a sequel to the aforesaid order dated 30.10.1987 and the applicant may be asked to refund excess payments. We have no doubt in our mind that this cannot and should not be done. The fixation of the applicant's pay at Rs.334/- w.e.f. 27.12.1975 and increments thereafter as set out in the order dated 30.8.1987 should not be altered to the disadvantage of the applicant and no recovery should be effected from the pay already drawn by him on this basis.

5. The application is disposed on the above terms.  
Parties to bear their own costs.

*R. Venkatesh* Sd/-  
DEPUTY REGISTRAR (JDLS)  
CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE

4/4/88

Sd/-  
MEMBER (A)