REGISTERED

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH
* * * * * * * * *

Commercial Complex (BDA)
Indiranagar
Bangalore - 560 038

Dated : 24 JUN 1988

APPLICATION NO.S. 478 & 479 / 88(T)

W.P. NOS 33434 & 33542 /82

Applicant(s)

Shri R. Satyanarayana & another

V/s

Respondent(s)

The Secretary, M/o Defence & 2 Ors

To

1. Shri R. Satyanarayana
Artist-cum-Photographer
Aeronautical Development
Establishment (ADE)
Jeevan Bheema Nagar
Bangalore - 560 075

2. Shri K.C. Balakrishnan
Artist-cum-Photographer
Aeronautical Development
Establishment (ADE)
Jeevan Bheema Nagar
Bangalore - 560 075

3. Smt Pramila Nesargi
Advocate
No. 1, 2nd Floor
SSB Mutt Buildings
Bangalore - 560 009

4. Dr M.S. Nagaraja
Advocate
35 (Above Hotel Swagath)
Ist Main, Gandhinagar
Bangalore - 560 009

5. The Secretary
Ministry of Defence
New Delhi - 110 011

6. The Scientific Adviser to Raksha Mantri
& Director GeneralResearch & Development
Directorate of Personnel (RD-22)
Ministry of Defence, 'H' Block
DHQ P.O.
New Delhi - 110 011

7. The Director
Aeronautical Development Establishment
(ADE)
Jeevan Bheema Nagar
Bangalore - 560 075

8. Shri M.S. Padmarajaiah
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/INTERIM ORDER~~ passed by this Tribunal in the above said application(s) on 13-6-88.

Encl : As above

DEPUTY REGISTRAR
(JUDICIAL)

CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE

DATED THIS THE 13TH DAY OF JUNE, 1988

Present { Hon'ble Shri Justice K.S. Puttaswamy, Vice-Chairman
and
Hon'ble Shri L.H.A. Rego, Member (A)

APPLICATION NOS. 478 & 479/1988

1. Shri R. Sathyanarayana,
s/o R. Krishnamurthy,
aged 46 years,
Artist-cum-Photographer,
Aeronautical Development
Establishment, J.B. Nagar,
Bangalore. .... Applicant in A.No. 478/88

2. Shri K.C. Balakrishnan,
s/o K. Chathukutty,
aged 45 years,
Artist-cum-Photographer,
Aeronautical Development
Establishment, J.B. Nagar,
Bangalore. .... Applicant in A.No. 479/88.

(Shri M.S. Nagaraja, Advocate for Applicant in A.No.479/88)

(Smt. Pramila Nesargi, Advocate for Applicant in A.No.478/88)

v.

1. The Union of India
rep. by its Secretary,
M/o Defence,
New Delhi.

2. The Scientific Adviser to the
Minister of Defence and
Director General, Research and
Development, Directorate of
Personnel (RD-22)
M/o Defence, 'H' Block,
New Delhi.

(3) The Director,
Aeronautical Development
Establishment, J.B. Nagar,
Bangalore.

.... Respondents.

(Shri M.S. Padmarajaiah, C.G.S.S.C.)

These applications having come up for hearing to-day, Vice-Chairman made the following:

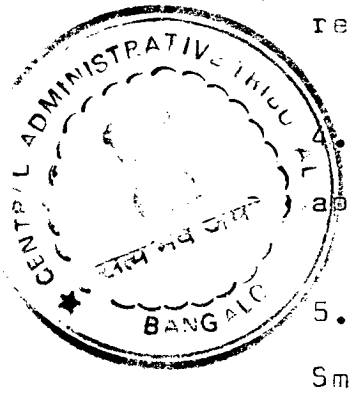
ORDER

As the questions that arise for determination in these transferred applications received from the High Court of Karnataka under Section 29 of the Administrative

Tribunals Act, 1985 (Act), are common, we propose to dispose them by a common order.

2. Sriyuths R. Satyanarayana and K.C. Balakrishnan, applicants in application Nos. 478 & 479 of 1988 respectively, initially joined service as Photo Assistants in the then pay scale of Rs.100-185 revised from time to time. On 12.4.1962 and 8.12.1960 respectively they have been promoted as Artist-cum-Photographers, in which capacity, they are working ever since then.

3. On the representation made by the applicants on their stagnation, lower time-scale of pay, Government by its order dated 13th Jan. 1972 (Annexure-2), directed that the pay-scales of the applicants be revised from 8.12.1960 with a condition that arrears shall not be paid to them till the date of that order. Except for this, the other claims of the applicants were not granted by Government. Hence the applicants approached the High Court in September, 1982 under Article 226 of the Constitution, for diverse reliefs, which on transfer, have been registered as Application Nos. 478 and 479/1988.



4. In their replies by the respondents have resisted these applications.

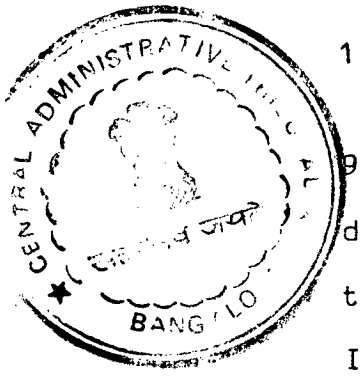
5. When these cases were taken up for hearing to-day, Smt. M.N. Pramila Nesargi has made an application praying to add an additional prayer.

6. Learned Counsel for the applicants contend that the amendments made by the President on 14th August, 1987

by the (Amendment Rules) to the Defence Research and Development Organisation Group 'C' Non-Gazetted (Technical, Scientific and other Non-Ministerial) Posts Recruitment Rules, 1968 ('Rules') had substituted the provision for promotion to the posts of Artists-cum-Photographers (ACPs) from 6.7.1968 and this Tribunal should direct the respondents to consider the cases of the applicants for promotions to the said posts from that very date.

7. Shri M.S. Padmarajaiah, learned Senior Standing Counsel for the Central Government appearing for the respondents, refuting the contentions of the applicants, contends that the amendment Rules made were only prospective and therefore their prayer cannot be granted.

8. The Rules made by the President under the proviso to Article 309 of the Constitution published on 6th July, 1968, came into force from that date. These Rules have been amended by the Amendment Rules made on 14th August, 1987.




9. Sub-rule (2) of Rule 1 of the Amended Rules declare that the Amended Rules shall come into force on the date of their publication in the official Gazettee. In express terms they are made prospective. When the law maker expressly declares that the law made by it will be prospective, a Court or a Tribunal cannot in any principle makes that retrospective. If that is done as urged for the applicants, then this Tribunal will be clearly ~~violating~~ legislating which it cannot do at all. On these reasons, we cannot uphold this contention of Smt. Pramila.

10. Even otherwise substitution of entries relating to promotions in the original Rules by the amendment Rules was not from the very date the original Rules were made by the President. The substitution of those entries are made only from the date the amendment Rules had come into force and not before, that the use of the term 'substitution' in the amendment Rules does not make them retrospective. We see no merit in this contention of Smt. Pramila and we reject the same.

11. There is no dispute that the Rules as amended by the Amendment Rules had provided for promotions to the post of ACPs from the date of their publication in the Gazettee. On the very provisions made in the Rules the respondents were bound to consider the case of the applicants for promotion to the posts of ACPs from the date the Amended Rules were published in the Gazettee.

12. Learned Counsel for the applicants next contends that Government having rightly revised the pay-scales of the applicants from 8th December 1960, should not have denied them the benefit of the arrears from that date till 12th January, 1972.

13. Shri Padmarajaiah contends that the grievance of the applicants for arrears was made before the High Court in September, 1982 by which time more than 10 years had elapsed and on that ground itself, this Tribunal which had stepped into the shoes of the High Court, should reject the claim of the applicants.

14. In its order dated 13th January, 1972, Government had expressly rejected the claim of the applicants for arrears from 8th December, 1960 to 12th January, 1972. In this very order, Government however directed notional fixation of pay for all other purposes from 8.12.1960 and in compliance with the same, the applicants were extended all such benefits to which they were entitled to in terms of that order in 1972 itself. From Sept. 1972 and onwards the applicants did not raise their little finger over the same and accepted the same till september 1982. When the applicants approached the High Court for that relief along with other reliefs, more than a decade had elapsed. Even if these cases had not been transferred to this Tribunal, then also on grounds of delay and latches, the High Court would have undoubtedly declined to grant this relief. We are therefore of the view that this Tribunal which had stepped into the shoes of the High Court, should follow the same and reject the same. We, therefore, reject this claim of the applicants.

15. Learned Counsel for the applicants contend that the amendments made to the Rules, had not met all the claims and demands of the applicants and therefore we should direct the respondents to examine them and pass such orders and amendments as are necessary in that behalf.

16. We will even assume that all the claims of the applicants had not been met by the amendments made to the Rules. But that does not prevent the applicants to approach Government through proper channel for redressal

of all other outstanding claims. When that is done, we have no doubt that the Government will examine them and pass all such orders and amendments as are necessary in that behalf.

17. In the light of our above discussion, we make the following orders and directions.

(i) We dismiss these applications in so far as they claim arrears of salary from 8th Dec. 1960 to 13th Jan. 1972.

(ii) We direct the respondents to consider the cases of the applicants for promotions to the posts of ACPs from the date the Amended Rules came into force and if they are found fit for promotion, then promote them from such date extending all such consequential financial benefits to which they are entitled to in accordance with law, with all such expedition as is possible in the circumstances.

18. Applications are disposed of in the above terms. But, in the circumstances of the case, we direct the parties to bear their own costs.

TRUE COPY

Sd/-
VICE-CHAIRMAN 13/6/88

Sd/-
MEMBER (A) 13.6.1988

DEPUTY REGISTRAR (JDL)
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE Kms/Mrv.