

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Commercial Complex(BDA)
Indiranagar
Bangalore - 560 038

Dated : 20 MAR 1989

APPLICATION NO (x) 680 / 88(F)

W.P. NO (S) _____

Applicant (x)

Respondent (s)

Shri R. Jagannathan

V/s

The DG, Dept of Posts (P.A. Wing),
New Delhi & 2 Ors

To

1. Shri R. Jagannathan
1369/3, I Phase, 3rd Stage
Gokul, Yeswantpur
Bangalore - 560 022

2. Dr M.S. Nagaraja
Advocate
35 (Above Hotel Swagath)
1st Main, Gandhinagar
Bangalore - 560 009

3. The Director General
M/o Communications
Department of Posts (P.A. Wing)
Bak-Tar Chavan
New Delhi - 110 001

4. The Post Master General
Karnataka Circle
Bangalore - 560 001

5. The Deputy Director of Accounts (Postal)
Karnataka Circle
Bangalore - 560 001

6. Shri M.S. Padmarajaiah
Central Govt. Stng Counsel
High Court Building
Bangalore - 560 001

*Issued by
Postmaster 22/3/89
No 3565 - A.M.C.R.*

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 application(x) on 14-3-89.

Encl : As above

[Signature]
for DEPUTY REGISTRAR
(JUDICIAL)

o/c

*Issued
K.M.P.
26-3-89*

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BANGALORE.

DATED THIS THE FOURTEENTH DAY OF MARCH 1989

Present: Hon'ble Shri P.SRINIVASAN

.. MEMBER(A)

APPLICATION NO.680/88(F)

R.Jegannathan,
1369/3, I Phase, 3rd Stage,
Gokul, Yeswantpur,
Bangalore 22.

.. Applicant

(Shri Dr.M.S.Nagaraja .. Advocate)

vs.

1. The Director General(P.A.Wing)
NEW DELHI.

2. The Postmaster General,
Karnataka circle,
Bangalore.

3. The Dy.Director of Accounts(Postal)
Karnataka Circle,
Bangalore.

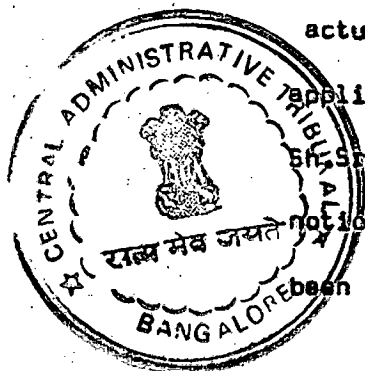
.. Respondents

(Shri M.S.Padmarajaiah .. Advocate)

This application has come up today before this Tribunal
for Orders. Hon'ble Member(A) made the following:

ORDER

The applicant is working as Senior Accountant in the
Office of Deputy Director of Accounts(Postal), Bangalore (Respondent
No.3). His grievance in this application, founded on Office Memorandum
dated 28.2.1984 issued by the Ministry of Finance, Department of
Expenditure (Annexure A-3), is that when his junior Sh.D.Srinivasa Rao,
who was working in the same cadre and in the same office was granted
qualification pay notionally with effect from 1st November, 1974 with
actual benefit of such fixation from 1.6.1981, the pay of the
applicant should also have been stepped upto equal the pay of
Sh.Srinivasa Rao(including the qualification pay given to the latter)
notionally with actual financial benefit from 1.6.1981 but this had
been denied to him.



2. The respondents have resisted the application on the ground namely that Sh.Srinivasa Rao was drawing higher pay all along in the same pay scale than the applicant and it was only because the applicant was given advance increments in 1973 as a result of his having passed the Revenue Audit Examination did his pay become equal that of Shri D.Srinivasa Rao. In view of this the claim of the applicant for stepping up his salary under O.M. dated 28.2.1984 was rightly rejected.

3. Dr.M.S.Nagaraja for the applicant and Shri M.S.Padmara-
jaiah for the respondents have been heard.

4. It would be necessary at this stage to set out the background of the case in some detail. Prior to 1.1.1973 persons working as Auditors in the then Post and Telegraph Audit Department were eligible for 4 advance increments on passing the Departmental Examination. After 31.12.1972, a change was made to the effect that Auditors passing the Departmental Examination were eligible to a flat qualification pay of Rs.15/- in addition to their normal pay. It appears that as a result of the difference in method in this regard from 1.1.1973, Auditors who passed the Departmental Examination after 1.1.1973 could on occasion get higher benefit than those who passed the Departmental Examination prior to that date even though the latter were senior. In order to correct this kind of anomaly arising purely as a result of granting qualification pay on passing the Departmental Examination after 1.1.1973 by a junior, the Department of Expenditure issued O.M. dated 28.2.1984. The operative part of this O.M.reads:-

" The President is further pleased to decide that in respect of these Auditors who passed the ~~exam~~ Departmental Examination prior to 1.1.1973 under the Scheme then in vogue, if the pay plus qualification pay of the Junior who qualified in such examination on or after 1.1.1973 happens to be more than the pay of the senior who had passed the examination before 1.1.1973, the difference may be granted as qualification pay to the senior with effect from the date of anomaly on a notionally basis and the actual benefit may be admissible only from 1.6.1981. The qualification pay so granted may also be taken into account for the purpose of fixation of pay of the senior on his promotion to the higher grade, irrespective of the fact whether the senior had been promoted before or on or after 1.6.1981. However, for the period prior to 1.6.1981, they will not be entitled to any arrears.

The grant of qualification pay in cases referred to in para 3 above will further be subject to the following conditions:-

1. Both the senior and junior employees should belong to the same cadre at the time the anomaly happened.
2. Both the senior and junior employee should hold the same post of Auditor with identical scale of pay at the time the anomaly happened and
3. The anomaly should be directly as a result of grant of qualification pay of Rs.15/- per month as admissible under this Ministry's O.M.No.7(56) E.III (A)/78 dated 25.9.81. For example if even prior to the occurrence of anomaly, the junior was already in receipt of higher pay than the senior by virtue of fixation of pay under the normal rules or due to any advance increments granted to him from time to time, then the provisions contained in this O.M.should not be invoked to grant qualification pay to senior employee, as per provisions envisaged in para 3 above."

5. There is no dispute between the parties that conditions No.1 and 2 in para 4 extracted above were fulfilled in this case, as Shri R.Jagannathan was senior to Sh.Srinivasa Rao, both belonged to the same cadre when Sh.Srinivasa Rao was allowed qualification pay of Rs.15/- in November 1974 giving rise to anomaly, both held the same post of Auditor with identical scale of pay. The dispute centres around condition No.3 which the applicant says he fulfills while the respondents say he does not fulfil this condition. As already stated the respondents say that Shri Srinivasa Rao was drawing higher pay than the applicant upto 24.8.1973. In 1973 the applicant's pay in the scale of Auditor was Rs.350/- while that of Shri Srinivasa Rao was Rs.370/-. On 28.7.1973, the applicant's pay was Rs.360/- while that of Shri Srinivasa Rao was Rs.380/-. It was only on 24.8.1973 that the applicant's pay was raised by 2 increments to Rs.380/-, as he passed the Revenue Audit Examination. Thus it was only from 24.8.1973 that the applicant stated drawing the same pay as that of Sh.Srinivasa Rao.

P. S. [Signature]

..4/-



Even after 24.8.1973 the date of increment in Sh.Srinivasa Rao's case was earlier ^{or than} ~~than~~ that of applicant. Sh.Srinivasa Rao earned the increment raising his pay from Rs.380 to Rs.392/- on 12.7.1974 while the applicant earned the same increment only from 28.7.1974. Thus, Sh.Srinivasa Rao having drawn higher pay than the applicant all along, the applicant was not eligible to have his pay stepped up from November 1974 to equal the pay of Sh.Srinivasa Rao including the qualification pay of Rs.15/- in terms of Department of Expenditure O.M. dated 28.2.1984.

6. I do not think that the contention urged on behalf of the respondents can be accepted. Condition No.3 stipulates that the anomaly namely a junior drawing higher pay (including qualification pay) than the senior should have arisen directly as a result of the grant of qualification pay of Rs.15/- per month. This condition is illustrated by example which follows: namely that if even prior to the occurrence of the anomaly the junior was already in receipt of higher pay than the senior by virtue of his pay having been fixed under the normal Rules or due to any advance increments granted to him from time to time, then the senior would not be entitled to the benefit of stepping up. Applying this rule strictly it will be seen that immediately prior to grant of qualification pay Rs.15/- to Sh.Srinivasa Rao who was admittedly junior to the applicant in November 1974, both the applicant and Sh. Srinivasa Rao were drawing pay at the stage of Rs.392/-. The applicant no doubt had reached that stage as a result of fixation of his initial pay on promotion as Auditor as well as the advance increments granted to him for having passed the Revenue Audit Examination, but these were the normal Rules for fixation of pay. But for a grant of qualification pay to Sh.Srinivasa Rao, they would have continued to draw the same pay. Sh.Srinivasa Rao was due for his next increment from Rs.392/-

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to Rs.404/- on 1.7.1974, the same date on which the applicant would also become due for that increment. Thus the anomaly by which Sh.Srinivasa Rao started drawing higher pay than the applicant by way of qualification pay arose in this case purely as a result of the grant of qualification pay to Sh.Srinivasa Rao. In view of this I must hold that the applicant fulfilled condition No.3 set out in the Department of Expenditure O.M. dated 28.2.1984 and since he admittedly fulfilled both the other conditions, he was entitled to notional fixation of his pay at the same figure as the pay plus qualification pay of Sh.Srinivasa Rao with effect from November 1974 and to the actual financial benefit arising from such fixation ^{with effect from} 1.6.1981. The respondents are directed to fix the pay of the applicant accordingly.

7. The application is disposed of on the above terms, leaving the parties to bear their own costs.

sd/-

MEMBER(A)

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20/3/89
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ADDITIONAL BENCH
BANGALORE