

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Commercial Complex (BDA)
Indiranagar
Bangalore - 560 038

Dated : 23 JAN 1989

APPLICATION NO. 875 / 88(F)

W.P. NO. _____

Applicant(s)

Shri S. Basavarajaiah
To

Respondent(s)

V/s The Regional Provident Fund Commissioner,
Karnataka, Bangalore & another

1. Shri S. Basavarajaiah
No. 28/1, 20th Main
West of Chord Road
Bangalore - 560 040

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

3. The Regional Provident Fund Commissioner
Karnataka
Bhavishyanidhi Bhavan
No. 8, Rajaram Mohan Roy Road
Bangalore - 560 025

4. The Central Provident Fund
Commissioner
9th Floor, Mayur Bhavan
Connaught Circus
New Delhi - 110 001

5. Shri M.L.N. Reddy
Advocate
83/1, 1st Floor, Vth Cross
Malleswaram Circle
Bangalore - 560 003

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(x) on 16-1-89.

Encl : As above

o/c *[Signature]*
DEPUTY REGISTRAR
(JUDICIAL)

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE

DATED THIS THE 16TH DAY OF JANUARY, 1989

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

APPLICATION NO. 875/1988

Shri S. Basavarajaiah,
Aged 48 years,
S/o late Siddaverappa,
No.28/1, 20th Main,
West of Chord Road,
Bangalore-40.

.... Applicant.

(Dr. M.S. Nagaraja, Advocate)

v.

1. The Regional Provident Fund
Commissioner, Karnataka,
Bhavishyanidhi Bhavan,
No.8, Rajaram Mohan Roy Road,
Bangalore-25.

2. The Central Provident Fund
Commissioner,
9th Floor, Mayur Bhavan,
Cannaught Circus,
New Delhi-1.

..... Respondents.

(Shri Reddy, Advocate)

This application having come up for hearing to-day,
Vice-Chairman made the following:

ORDER

This is an application under Section 19 of the Administrative Tribunals Act, 1985 ('Act').

2. Prior to 10.3.1978, the applicant was working as an Upper Division Clerk ('UDC') in the office of the Regional Provident Fund Commissioner, Karnataka, Bangalore ('RPFC').



3. On 10.3.1978 the RPFC kept the applicant under suspension and commenced disciplinary proceedings against him for certain alleged misdemeanour which ended in an order made on 20.5.1982 dismissing him from service and affirmed by the Appellate Authority on 15.4.1986. Those orders were challenged by the applicant before this Tribunal in Application No.1610 of 1986 (Annexure-A1).

4. On 30.7.1987, a Division Bench of this Tribunal consisting of Hon'ble Shri P. Srinivasan and Hon'ble Shri Ch. Ramakrishna Rao, Member (J) disposed of the said application with these directions:

"6. In the result we quash the orders of the DA and the AA and direct the respondents to reinstate the applicant in service and give him all consequential benefits from the date from which he was dismissed from service. The Respondents will, however, have the liberty to initiate fresh proceedings in accordance with law if they deem it necessary."

Pursuant thereto the RPFC issued an order on 25.8.1987 continuing the applicant under suspension under Rule 6(4) of the Employees Provident Fund Staff (Classification, Control and Appeal) Rules, 1971 ('Rules'). But later on 10.5.1988 the RPFC reinstated the applicant in service as UDC and posted him to the Sub-Regional Office at Mangalore, the validity of which was again challenged by him before us in Application No.986 of 1988. We disposed of the same on 11.7.1988 with the

following directions:

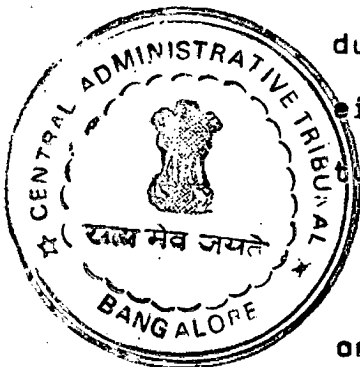
"(1) We uphold the posting of the applicant in SRO Mangalore in the impugned order dated 10.5.1988 and reject this application.

(2) But notwithstanding the above we direct that the period from 10.5.1988 till this day be treated as compulsory waiting for which period he will be entitled to full salary and allowances and necessary joining time to join SRO Mangalore be computed from this day only and not from 21.6.1988 on which he was relieved."

In pursuance of this order, the applicant has reported for duty at Mangalore on 11.7.1988 and is working at that place ever since then.

5. In this application, the applicant has claimed payment of full salary and allowances as if he was on duty from 10.3.1978 to 20.5.1982 and for a direction either to initiate fresh proceedings within a period of two months and not thereafter.

6. The first relief is claimed on the ground that on quashing of the order of his dismissal by this Tribunal the legal position is that he should be deemed to be in service from 10.3.1978 to 20.5.1982 without interruption. The second relief is sought on the ground that the initiation or otherwise of the disciplinary



proceedings cannot be kept in suspended animation indefinitely.

7. In resisting this application, the respondents have filed their reply.

8. Dr. M.S. Nagaraja, learned counsel for the applicant contends, that on quashing of the orders of the appellate and the disciplinary authority the period from 10.3.1978 to 20.5.1982 had to be treated as if he was in service necessarily entitling him for full salary and allowances as if he was in service during this period. In support of his contention Dr. Nagaraja strongly relies on the ruling of the Supreme Court in TEKRAJ VASANDI @ K.L. BASANDHI v. UNION OF INDIA AND OTHERS (AIR 1988 SC 469) and a ruling of Rama Jois, J. in R. SHAMANNA v. STATE BANK OF MYSORE (1987 LAB. I.C.4).

9. Shri M.L.N. Reddy, learned counsel for the respondents, refuting the contention of Dr. Nagaraja, pleads that on a true construction of Fundamental Rule (FR) 54B (1) and (6), the applicant was not entitled to payment of full salary and allowances.

10. Dr. Nagaraja does not dispute that FRs 54B(1) and (6) apply to the employees of the Corporation. But, contends that those Rules do not disentitle the applicant to claim payment of full salary and allowances.

11. We have carefully read FRs 54B(1) and (6). We do not find anything in those Rules to justify denial of salary and allowances to the applicant for the period from 10.3.1978 to 20.5.1982.

12. In Tekraj Vasandi's case the Supreme Court had occasion to deal with this very question and declare the legal position. In that case, a Division Bench of the Court speaking through Ranganatha Misra, J. had expressed on this point thus:

"Before we part with this case, we must indicate what reliefs are appellant would be entitled to. Now that the order of the dismissal is set aside and the proceedings have been restored to the stage of enquiry, the appellant shall be deemed to have been restored to service. The appellant would have become entitled to the normal relief available in such a situation. He should be deemed to be in service and we do not agree with Dr. Anand Prakash that his suspension should continue. His suspension which had merged into dismissal has been vacated. It shall, however, be open for the employer to make any direction as is deemed appropriate in that behalf in future. The appellant, therefore, becomes entitled to the salary for the past period subject to his satisfying the authorities that he has not earned any other income during that period. The appellant shall be given reasonable opportunity by the enquiring officer to meet the charges and the enquiry shall be completed within four months. The appellant has personally assured us in Court that he will fully co-operate in the enquiry. The enquiry officer shall allow inspection to the appellant of all records relevant to the enquiry."



On these principles that squarely govern the question the applicant is clearly entitled to full salary and allowances

if he was not otherwise engaged in any other service. Then the only other question that calls for our examination is to ascertain whether the applicant was engaged in any other service during the said period.

13. Before us the parties do not dispute that during the aforesaid period, the applicant who had drawn subsistence allowance from time to time, had produced non-employment certificates and that the same had been acted upon by the authorities. If that is so, then the question of the applicant being employed elsewhere during the said period, does not arise. From this it follows that on the ratio in Takaraj Vasandi's case, the applicant is entitled to payment of full salary and allowances for the period from 10.3.1978 to 20.5.1982 deducting the amounts already paid to him. We must therefore accept this claim and issue appropriate directions.

14. We have earlier noticed that this Tribunal made its order as early as on 30.7.1987, annulling the orders made against the applicant however reserving liberty to the authority to initiate fresh proceedings if it so decides. But, so far the disciplinary authority had neither initiated fresh proceedings against the applicant nor it had terminated them by taking a positive decision in that behalf.

15. In the order made in Application No.1610 of 1986 no time-limit has been prescribed for the authority to decide on the initiation or otherwise of the proceedings.

16. Shri Reddy informs us that the authorities are still examining the matter and a final decision has not so far been taken either to initiate or to drop the proceedings.

17. When the authorities have not taken a decision one way or the other they are entitled to do in terms of the order made by this Tribunal, we should not usurp their jurisdiction and power and issue any direction in contravention of the earlier directions. On this view, we must necessarily leave the matter of initiating or dropping the proceedings to be decided by the Disciplinary Authority one way or the other. But, in so doing, we consider it proper to impose a reasonable time-limit to decide the same one way or other.

18. Shri Reddy prays for at least three months' time to enable the competent authority to examine and decide the matter one way or the other. We are of the view that this request of Shri Reddy is reasonable.

19. On the payment of arrears due to the applicant for the period from 10.3.1978 to 20.5.1982, it is proper to direct the respondents to phase out the same yearwise, for the purpose of computation of income under the Income Tax Act, 1961.

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20. In the light of our above discussion, we make the following orders and directions:-

- 1) We direct the respondents to make payment of the difference of salary and allowances due to the



applicant for the period from 10.3.1978 to 20.5.1982 as if he was in service, deducting therefrom all such amounts paid as subsistence allowance, however phasing out payment yearwise for purposes of computation of income under the Income Tax Act, 1961 with all such expedition as is possible in the circumstances of the case and in any event within a period of one month from the date of receipt of this order.

- 2) We direct the respondents to decide on the initiation or otherwise of the disciplinary proceedings against the applicant pursuant to the liberty reserved by this Tribunal in Application No.1610 of 1986 with all such expedition as is possible in the circumstances of the case and in any event within a period of three months from the date of receipt of this order and communicate their decision to the applicant thereafter within a reasonable time. But, if no such decision is taken by them within the aforesaid period then they shall not do so thereafter and the liberty reserved shall stand abated.

21. Application is 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

Sd/-

MEMBER (A) V 16.1.1987

np/Mrv.

16/1/1987
DEPUTY REGISTRAR (JDL)
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Commercial Complex(BDA)
Indiranagar
Bangalore - 560 038

Dated:

25 APR 1989

IA I IN APPLICATION NO (S) 875 /88(F)

W.P. NO (S) _____

Applicant (s)

Shri S. Basavarajaiah

To

Respondent (s)

V/s

The Regional Provident Fund Commissioner,
Bangalore & another

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No. 28/1, 20th Main
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Bangalore - 560 040
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4. The Central Provident Fund
Commissioner
9th Floor, Mayur Bhavan
Connaught Circus
New Delhi - 110 001
5. Shri M. Vasudeva Rao
Central Govt. Stng Counsel
High Court Building
Bangalore - 560 001

Subject : SENDING COPIES OF ORDER PASSED BY THE BENCH

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passed by this Tribunal in the above said application(S) on 21-4-89.

[Signature]
DEPUTY REGISTRAR
(JUDICIAL)

Encl : As above

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26-4-89


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**In the Central Administrative
Tribunal Bangalore Bench,
Bangalore**

ORDER SHEET

Application No. **875** of 1988 (F)

<u>Applicant</u>	V/s	<u>Respondent</u>
S. Basavarajaiah		The Regional Provident Fund Commissioner, Bangalore & another
Advocate for Applicant		Advocate for Respondent
Dr M.S. Nagaraja		M. Vasudeva Rao

Date	Office Notes	Orders of Tribunal
21.4.1989	 <p style="margin-top: 20px;">TRUE COPY</p>	<p><u>KSPVC/LHARM</u></p> <p><u>Orders on IA No.1 - application for extension of time:</u></p> <p>In this IA, the respondents have sought for three months' extension of time from the expiry of time already granted by us.</p> <p>Shri M.V.Rao, learned counsel for the respondents, urges for granting time sought for in IA No.1. Dr. MSN opposes the grant of any extension of time that too before the expiry of time.</p> <p>Shri Rao states that the respondents have time till 30.4.1989, but since this Tribunal is closing for vacation it is proper to consider this application and make order. We are satisfied that the facts and circumstances stated in IA No.1 justify us in granting a reasonable time. We, therefore, allow IA No.1 in part and extend time till 31.5.1989 for complying with the directions issued in our order dated 16.1.1989.</p>


DEPUTY REGISTRAR (JDL)
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE

Sd/-

Sd/-

M(A)