

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Commercial Complex (BDA)
Indiranagar
Bangalore - 560 038

Dated :

21 SEP 1989

IA II IN APPLICATION NO (S) 912 & 919 /88(F)

W.P. NO (D) _____

Applicant (s)

Shri B.R. Venkataraman & anr

To

Respondents

V/s

The Comptroller & Auditor General of India,
New Delhi & 2 Ors

1. Shri B.R. Venkataraman
Accountant
Central Machine Tool Institute
Tumkur Road
Bangalore - 560 022
2. Shri Ramakrishna Manja
Administrative Officer
Central Machine Tool Institute
Tumkur Road
Bangalore - 560 022
3. Shri K. Suman
Advocate
35 (Above Hotel Swagath)
1st Main, Gandhinagar
Bangalore - 560 009
4. The Comptroller & Auditor General
of India
No. 10, Bahadur Shah Zafar Marg
New Delhi - 110 002

5. The Secretary
Department of Pension &
Pensioners Welfare
Nirvaahan Sadan
New Delhi
6. The Secretary
Ministry of Finance
Department of Expenditure
New Delhi - 110 001
7. Shri M.S. Padmarajiah
Central Govt. Stng Counsel
High Court Building
Bangalore - 560 001

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(s) on 19-9-89.

Encl : Asabove

[Signature]
DEPUTY REGISTRAR
(JUDICIAL)

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

ORDER SHEET

Application No. 9128919 of 1988

Applicant

B. R. Venkataraman & anr

Advocate for Applicant

Dr M.S. Nagaraja

Respondent

The Comptroller & Auditor General of India New Delhi

Advocate for Respondent

M.S. Padmarajaiah

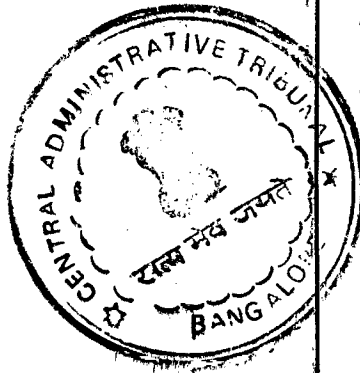
Date	Office Notes	Orders of Tribunal
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KSP/LHAR : 19.9.89

Applicants by Shri K.Suman.

Respondents by Shri M.S. Padmarajaiah.

ORDERS ON I.A.No.II - APPLICATION
FOR EXTENSION OF TIME IN APPLICATION
NOS. 918/88 and 919/88.



In this application, the respondents have sought for extension of time by another four months. The reasons stated in I.A.No.II is that they have approached the Supreme Court in Special Leave Petitions (SLP) and that so far that has not been listed for admission with stay.

Shri Padmarajaiah urges for the grant of time sought in IA No.II.

Shri Suman vehemently opposes grant of any time or extension.

We are of the view that the facts and circumstances stated in I.A. justify grant of reasonable time to obtain an order of stay from the Supreme Court or to implement our orders. On an examination of the facts and circumstances of the case, we consider it proper to extend time till 31-10-1989.

P.t.o.

Date	Office Notes	Orders of Tribunal
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On the foregoing, we allow
IA No. II and extend time till
31-10-1989 either to obtain orders
of stay from the Supreme Court or
to implement our orders.

Sd —
(K.S. POTTASWAMY)
VICE CHAIRMAN

Sd —
(L.H.A. REGD)
MEMBER(A)

TRUE COPY

Haei
SECTION OFFICER 20/9/89
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL CLERK
BANGALORE

DEPUTY REGISTRAR
(JUDICIAL)

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

ORDER SHEET

Application Nos. **912 & 919** of 1988(F)

Applicant

B.R. Venkataraman & anr

Advocate for Applicant

Dr M.S. Nagaraja




V/s

**The Comptroller & Auditor General
of India, New Delhi & 2 Obs**

Advocate for Respondent

M.S. Padmarajaiah

Respondent

Date	Office Notes	Orders of Tribunal
	<p>21-7-89 25/7</p> <div style="text-align: center;"></div> <p style="text-align: center;">TRUE COPY</p> <p style="text-align: center;">DEPUTY REGISTRAR (JDL) CENTRAL ADMINISTRATIVE TRIBUNAL BANGALORE</p>	<p>KSP/LHAR : 21.7.89</p> <p>Applicant by Dr.M.S.Nagaraja. Respondents by Shri M.S.Padma- rajaiah.</p> <p><u>ORDERS ON I.A.NO.1 - APPLICATION FOR EXTENSION OF TIME.</u></p> <p>In this I.A. the respondents have sought for further extension of time to comply with the directions of this Tribunal xxx by another four months for the reasons stated in the application.</p> <p>Shri Padmarajaiah urges for grant of the time sought in I.A.No.1.</p> <p>Dr.Nagaraja opposes grant of any further extension.</p> <p>We are satisfied that the facts and circumstances stated in I.A. No.1 justify us to grant a reasonable extension of time. We, therefore, allow I.A.No.1 and extend time till 31-8-1989.</p> <p>I.A.No.1 is disposed of in the above terms, But in the circumstances of the case, we direct the parties to bear their own costs.</p> <div style="display: flex; justify-content: space-between; margin-top: 20px;"><div style="text-align: center;"> VICE CHAIRMAN 21.7.89</div><div style="text-align: center;"> MEMBER(A) 21.7.89</div></div>

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Commercial Complex(BDA)
Indiranagar
Bangalore - 560 038

Dated : 2 MAR 1989

APPLICATION NO (S) 912 & 919 / 88(F)

W.P. NO (S)

Applicant (s)

Respondent (s)

Shri B.R. Venkataraman & another V/s The Comptroller & Auditor General of India,
To & 2 Ors

1. Shri B.R. Venkataraman
Accountant
Central Machine Tool Institute
Tumkur Road
Bangalore - 560 0022
2. Shri Ramakrishna Manja
Administrative Officer
Central Machine Tool Institute
Tumkur Road
Bangalore - 560 022
3. The Comptroller & Auditor General
of India
No. 10, Bahadur Shah Zafar Marg
New Delhi - 110 002
4. The Secretary
Department of Pension &
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Nirvachan Sadan
New Delhi
5. The Secretary
Ministry of Finance
Department of Expenditure
New Delhi - 110 001
6. Shri M.S. Padmrajiah
Central Govt. Stng Counsel
High Court Building
Bangalore - 560 001
7. Dr M.S. Nagaraja
Advocate
35 (Above Hotel Swagath)
1st Main, Gandhinagar
Bangalore - 560 009

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(s) on 28-2-89.

Encl : As above

[Signature]
DEPUTY REGISTRAR
(JUDICIAL)

[Signature]
K. V. Venkataraman
2-3-89

[Signature]
O/C

CENTRAL ADMINISTRATIVE TRIBUNAL: BANGALORE

DATED THIS THE 28TH DAY OF FEBRUARY, 1989.

Present:

Hon'ble Mr. Justice K.S. Puttaswamy,

... Vice-Chairman.

And:

Hon'ble Mr. P. Srinivasan,

.. Member(A).

APPLICATIONS NOS. 912 & 919 OF 1988

B.R. Venkataraman,

Aged 37 years,

S/o M.S. Ramanathan,

Working as Accountant in

Central Machine Tool Institute,

Tumkur Road, Bangalore-560 021.

.. Applicant in A.912 of 1988.

Ramakrishna Manja,

Aged 42 years,

S/o late Manja Ehat,

Administrative Officer,

Central Machine Tools Institute,

Tumkur Road, Bangalore-560 052.

.. Applicant in A.No.919 of 1988.

(By Dr. M.S. Nagaraja, Advocate)

v.

1. The Comptroller and Auditor

General of India,

New Delhi-110 002.

2. The Union of India

by its Secretary, Department of Pension

and Pensioners Welfare, New Delhi.

3. The Secretary to Government of India

Ministry of Finance,

Department of Expenditure,

New Delhi.

.. Respondents.

(By Sri M.S. Padmarajaiah, Standing Counsel):

These applications coming on for hearing, Hon'ble Vice-Chairman made the following:

ORDER

As the questions of law that arise for determination in these cases are common, we propose to dispose of them by a common order.

2. Sriyuths B.R. Venkataraman and Ramakrishna Manja, applicants in Applications Nos. 912 and 919 of 1988 joined service as Auditors



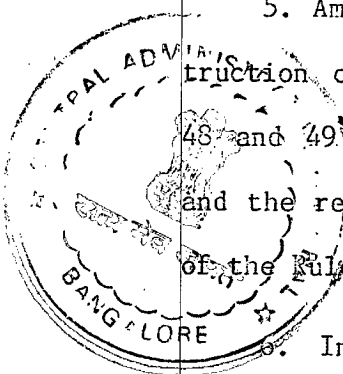
on 2-5-1973 and 2-11-1974 respectively in the office of the Accountant General, Karnataka, Bangalore ('AG') and thereafter made career advances legitimately due to them.

3. In 1983 and 1982 the applicants made applications for different appointments through proper channel in the Central Machine Tool Institute, Bangalore ('Institute') a wholly owned and controlled institute of the Central Government to which they were duly selected. On their selections they were relieved on 4-5-1983 and 17-5-1982 in the office of the AG and they reported for duty in the Institute on 5-5-1983 and 18-5-1982 respectively. In the institute they have been confirmed from the dates they joined service.

4. On their confirmations in the Institute, the applicants tendered technical resignations to their respective posts in the office of the AG and sought for pro-rata retiral benefits due to them under the Civil Services (Pension) Rules, 1972 ('Rules') and the orders made by Government thereto which are consolidated and published in the "Brochure on Mobility of Personnel between Central Government and Central Autonomous Bodies, State Government and Central Autonomous Bodies, Central Government to State Autonomous Bodies and Vice-Versa" (1987 Edition) ('Brochure'). On 1-2-1988 and 19-2-1988 the AG and Government respectively had rejected their claims. Hence, these applications.

5. Among others, the applicants have urged that on a true construction of O.H.No.4(12)/85-P&PW dated 31-3-1987 published at pages 48 and 49 of the Brochure, they were entitled for pro-rata pension and the respondents be directed to make payment of the same in terms of the Rules and orders in force.

6. In their separate but identical replies, the respondents have urged that the OM dated 31-3-1987 was prospective and, therefore,



they were not entitled for the benefit of that order. On this premise the respondents have urged that the applicants were entitled for pro-rata pension only on completion of their qualifying service under the Rules and not before that.

7. Dr. M.S.Nagaraja, learned Advocate has appeared for the applicants. Sri M.S.Padmarajaiah learned senior Central Government Standing Counsel has appeared for the respondents.

8. Dr. Nagaraja has contended that though the O.M.dated 31-3-1987, on its literal construction was prospective, the same should be given retrospectivity when one has regard to the scheme and object of the orders made by Government on the subject compiled in the Brochure and to make that order constitutional and valid and on so holding, it was not open to the respondents to withhold or postpone the pro-rata pension admissible to the applicants under the Rules. In support of his contention Dr. Nagaraja has strongly relied on the ruling of the Supreme Court in R.L.MARWAHA v. UNION OF INDIA AND OTHERS [1987(4) SCC 31].

9. Sri Padmarajaiah refuting the contention of Dr.Nagaraja has urged that neither the language nor the scheme and object of the orders compiled in the Brochure justified us to give retrospectivity to the O.M.dated 31-3-1987 and the decisions rendered by the authorities were legal and valid.

10. The claim of the applicant in A.No.912 of 1988 has been rejected by the AG on 1-2-1988 (Annexure-A4) in these words:

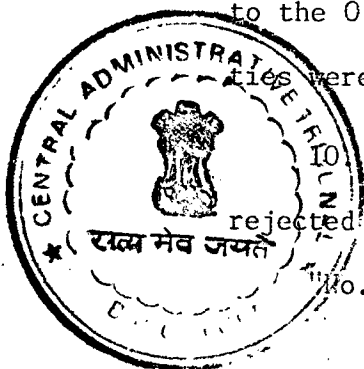
No.ES.I/A9/87-88/488

Office of the
Accountant General(Accounts & ENTIT)
P.E.No.5329, Karnataka,
Bangalore 560 001.

Dated: 1-2-1988.

To

Sri B.R.Venkataraman,
No.26, (Old No.112), IV Main Road,
Malleswaram,
Bangalore-560 003.



Sir,

Sub: Grant of pro-rata pensionary benefits for the service rendered in this office.

Ref: Your representation dated 10th April, 1987.

I am to invite a reference to your representation dated 10-8-1987 on the subject cited above and to state that the Headquarters Office have clarified that the provisions contained in the Government of India O.M. dated 31-3-1987 will not be applicable in your case as your permanent absorption in Central Machine Tool Institute has taken place prior to 31-3-1987.

Yours faithfully,

Sd/- Accounts Officer/ES.I."

The claim of the applicant in A.No.919 of 1983 has been rejected by Government on 19-2-1983 (Annexure-A3) in these words:

No.4/1/88-P&PW(D)
Government of India
Department of Pension
& Pensioners' Welfare

Nirvachan Sadan,
New Delhi
Dated: 19-2-1988

To

Shri Ramakrishna Manja,
Administrative Officer,
Central Machine Tool Institute,
Tumkur Road,
Bangalore-560 022.

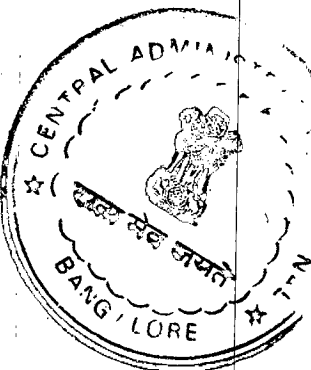
Sub: Grant of pro-rata pensionary benefits in respect of service rendered under Central Government - regarding.

Sir,

I am directed to refer to your letter dated 12-1-1988 addressed to the Minister of State in this Ministry on the subject cited above and to say that the benefits granted vide this Departments O.M.No.4(12)/85-P&PW dated 31st March, 1987 cannot be given retrospective effect. It appears you had been absorbed in the Central Autonomous body during 1982 and your case has to be decided in accordance with the provisions of the Department of Expenditure O.M.dated 8th April, 1976. As you may be already aware, pro-rata retirement benefits under this O.M. are admissible from the deemed date of voluntary retirement of a Government servant i.e., on completion of 30 years of service or 50/55 years of age.

Yours faithfully,

Sd/- K.S.R. Krishna Rao,
Dy. Secretary to the Govt. of India."

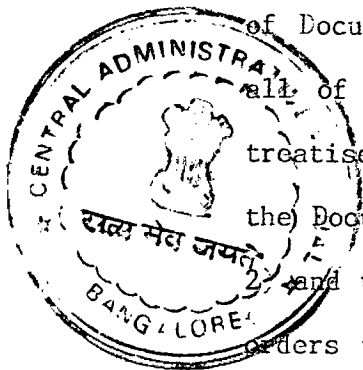


Even though these order are not very clear, there is no dispute that the applicants had rendered the minimum qualifying service to entitle them for pro-rata pension under the Rules. The liability to pay is not disputed by the respondents. But, what is disputed by them is only on the time for that payment. On this, the respondents claim that their liability will arise only on the applicants completing their qualifying service for pension under Rule 37 of the Rules and not before that.

11. In O.M.No.28/10/84-Pension Unit dated 29-8-1984 published at pages 28 and 29 of the Brochure, Government had inter-alia directed that order will be effective from the date of its issue and its revised policy adumbrated therein will be applicable to all those that are referred to therein after the date of issue of that order. This order applied only to those that joined public sector undertakings of Central Government. On noticing the inequity of this order, Government in its O.M.dated 31-3-1987 removed the distinction and difference between the public sector undertakings and non-public sector undertakings. From 1-4-1987 the invidious distinction and difference between the two categories stands abolished.

12. In the construction of documents and deeds various rules have been evolved by Courts and Judges. The treatise 'Interpretation of Documents' by Roland Burrows (1943 Edition) had neatly collected all of them. On the application of the principles noticed in the treatise and in particular the principle under the heading 'When the Document is clear no Rules of Interpretation needed' (vide: page 2) and the clear language of clause 7 of the order which reads "these orders will take effect from the date of issue" we cannot say that the construction placed by the respondents is plainly wrong.

13. But, in Marwaha's case, the Supreme Court dealing with the



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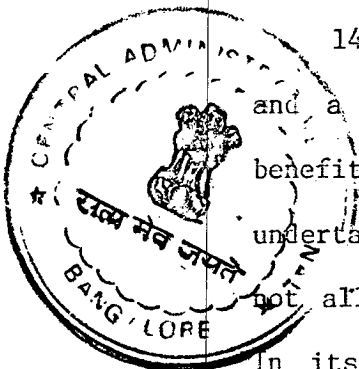
case of Marwaha who had retired prior to the order dated 20-8-1984 and its applicability or otherwise to his case had expressed thus:

9. We do not also find much substance in the plea that this concession being a new one it can only be prospective in operation and cannot be extended to employees who have already retired. It is true that it is prospective in operation in the sense that the extra benefit can be claimed only after August 29, 1984 that is the date of issue of the government order. But it certainly looks backward and takes into consideration the past event that is the period of service under the Central Government for purposes of computing qualifying service because such additional service can only be the service rendered prior to the date of issue of the government order. By doing so the government order will not become an order having retrospective effect. It still continues to be prospective in operation. Whoever has rendered service during any past period would be entitled to claim the additional financial benefit of that service if he is alive on August 29, 1984 under the government order but with effect from August 29, 1984.

10. In the result we hold that paragraph 7 of the government order cannot be used against persons in the position of the petitioner to deny them the benefit of the past service for purposes of computing the pension."

We are of the view that these principles apply in all fours to the applicability or otherwise of the order dated 31-3-1987 on the very same subject. We cannot distinguish these principles on any ground. We must, therefore, apply these principles and uphold the claim of the applicants. On this conclusion, it is unnecessary for us to examine all other questions. But, as our order is subject to correction by the Supreme Court, we propose to notice and examine the other questions also.

14. In the previous orders Government had made a distinction and a difference in extending the benefit of pro-rata retirement benefits to those absorbed in autonomous bodies and the public sector undertakings. In the former, the benefit of pro-rata pension was not allowed immediately though the same was allowed in the latter. In its order dated 31-3-1987 that distinction has been abolished and the benefit to those absorbed in public sector undertakings had also been extended to those absorbed in autonomous bodies however prospectively [vide: clause (1) of the order].

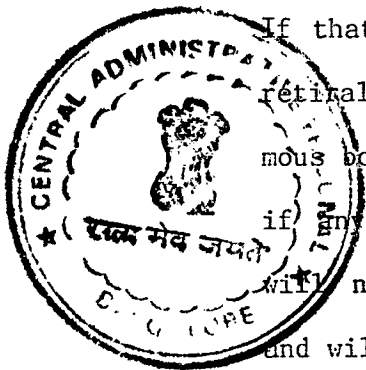


15. The true scope and ambit of Articles 14 and 16 of the Constitution has been examined and re-stated by the Supreme Court in a large number of cases. In RAM KRISHNA DALMIA AND OTHERS v. JUSTICE S.R.TENDOLKAR AND OTHERS (AIR 1958 SC 538), RE:SPECIAL COURTS BILLS CASE (AIR 1979 SC 478) and D.S.NAKARA AND OTHERS v. UNION OF INDIA (AIR 1983 SC 130) those principles have been restated. The new dimension of Article 14 of the Constitution namely arbitrariness was the very antithesis of rule of law enshrined in Article 14 of the Constitution propounded for the first time in E.P.ROYAPPA v. STATE OF TAMILNADU (AIR 1974 SC 555) has been elaborated in SMT.MANEKA GANDHI v. UNION OF INDIA AND ANOTHER (AIR 1978 SC 597) and AJAY HASIA AND OTHERS v. KHALID MUJIB SEHRAVARDI AND OTHERS (AIR 1981 SC 487). - Bearing the principles stated in all these cases, we must examine the question touching on the constitutionality of the order.

16. All those previously working in Central Government and opt for absorption either in autonomous bodies or public sector undertakings form a class by themselves. The fact that some opt to absorb in autonomous bodies and that some others opt to public sector undertakings, does not destroy their grouping or class character of erstwhile Central Government employees and their claim for pro-rata retirement benefits. All of them belong to one and the same class.

If that is so, then they cannot be differentiated for extending the retirement benefits on the ground that some opt for absorption in autonomous bodies and others to public sector undertakings. The distinction if any made on that score will be really without a difference and will not pass the test of a valid and permissible classification and will be violative of Articles 14 and 16 of the Constitution.

17. The distinction and difference, if any, to be made between the two categories will also be arbitrary and irrational. If that is so, then also it will be violative of Article 14 of the Constitution.



18. In order to ward off the constitutional infirmities noticed by us, it is proper to hold that the order dated 31-3-1987 applies even to those who had been absorbed in autonomous bodies also before that order was made by Government.

19. On the foregoing discussion, we hold that the refusal of the AG and Government to extend the benefits of the order dated 31-3-1987 to the applicants is illegal. We must, therefore, quash the impugned orders and issue appropriate directions.

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

- (1) We quash the orders impugned by the applicants in their respective applications.
- (2) We declare that the applicants are entitled for pro-rata pension and retiral benefits in terms of the Pension Rules and other orders regulating the same.
- (3) We direct the respondents to examine the claims of the applicants for pro-rata pension and retiral benefits in accordance with the pension Rules and all other orders regulating the same and arrange for the payment of all such amounts which are due to them with all such expedition as is possible in the circumstances of the cases and in any event on or before 30-6-1989.

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

SL _____

VICE-CHAIRMAN

SL _____

MEMBER(A)

TRUE COPY

np/

[Signature]
DEPUTY REGISTRAR (JDL)
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE