

Commercial Complex(BDA)
Indiranagar
Bangalore - 560 038

Dated 24 JAN 1989

APPLICATION NO (S) 1013 & 1014 / 88(F)

W.P. NO (S)

Applicant (s)

Respondent (s)

Shri M. Raghupathy & another
To

V/s The Secretary, M/o Finance, Dept of Expenditure,
New Delhi & 2 Ors

1. Shri M. Raghupathy
Office Superintendent Grade II
Aeronautical Development Establishment
C.V. Raman Nagar
Bangalore - 560 093
2. Shri B.C. Nagendran
Office Superintendent Grade I
Aeronautical Development Establishment
C.V. Raman Nagar
Bangalore - 560 093
3. Shri M. Narayanaswamy
Advocate
544 (Upstairs), V Block
Rajajinagar
Bangalore - 560 010
4. The Scientific Adviser to Raksha Mantri
& Director General Research & Development
Ministry of Defence
D.H.Q P.O.
New Delhi - 110 011

5. The Secretary
Ministry of Finance
Department of Expenditure
New Delhi - 110 001
6. The Director
Aeronautical Development
Establishment
C.V. Raman Nagar
Bangalore - 560 093
7. 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 a copy of ORDER/~~STAY~~/~~INTERIM~~/~~ORDER~~
passed by this Tribunal in the above said application(s) on 17-1-89.

DEPUTY REGISTRAR
(JUDICIAL)

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE

Present: Hon'ble Shri P. Srinivasan, Member (A)
DATED THIS THE 17TH DAY OF JANUARY, 1989
APPLICATION NOS. 1013 & 1014/1988

1. Shri M. Raghupathy,
S/o V. Muniswamy,
aged 50 years,
O/o the Superintendent, Gr. II,
Aeronautical Development
Establishment, C.V. Raman Nagar,
Bangalore-93.

2. Shri B.C. Nagendran,
S/o late B.V. Chikkaramaiah,
Major, O/o the Supdt. Gr. I,
Aeronautical Development
Establishment, C.V. Raman Nagar,
Bangalore-93.

.... Applicants.

(Shri M. Narayanaswamy, Advocate)

v.

1. The Government of India,
rep. by its M/o Finance,
Dept. of Expenditure,
New Delhi.

2. The Scientific Advisor to the
Minister of Defence & Director
General, Research & Development,
M/o Defence, Research & Develop-
ment Organisation, D.H.A. Post,
Sena Bhavan, South Block,
New Delhi.

3. The Director,
Aeronautical Development
Establishment, C.V. Raman Nagar,
Bangalore-93.

.... Respondents.

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

These applications having come up for hearing to-day,

Shri P. Srinivasan, Hon'ble Member (A) made the following:

O R D E R

These applications had been listed for today under
cases not ready for hearing. However, Shri M. Narayana-
swamy, counsel for the applicants and Shri M.S. Padmarajaiah



counsel, for the respondents stated that these applications could be heard and disposed of finally today. Accordingly, both of them have been heard.

2. Both the applicants who were working as Upper Division Clerks, the first in the Aeronautical Development Establishment and the second in Electronics Research Radar Development Establishment were promoted as Office Superintendents, Grade-II, the first applicant with effect from 23.7.1981 and the second from 29.8.1981. Before their promotion they were drawing special pay of Rs. 35/- as Upper Division Clerks and this was not taken into account while fixing their initial pay on promotion as Office Superintendent Grade-II.

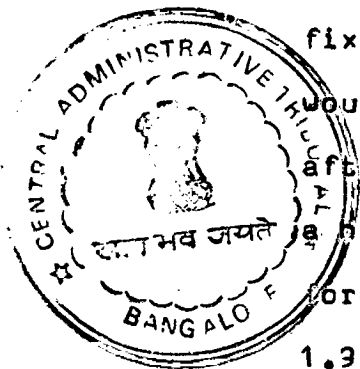
3. Shri M. Narayanaswamy, appearing for the applicants submitted that, in their letter dated 1.9.1987, the Government of India had stated that special pay of Rs. 35/- granted to Upper Division Clerks in the non-secretariat offices for attending to work of a complex and important nature would be taken into account while fixing their initial pay on promotion to higher posts. This order was however, made effective from 1.9.1985 and so Upper Division Clerks drawing special pay, who were promoted before that date were not granted the benefit of that order. It may be mentioned here that there were 2 alternative conditions prescribed for taking into account the special pay and they were that the incumbent should have held the post in which he drew special pay substantively or he should have held that post continuously for a period of 3 years

P. J. K.

or more. Shri Narayanaswamy submitted that both the applicants fulfilled these conditions. Their case is that denying the benefit of the letter dated 1.9.1987 to persons who were promoted prior to 1.9.1985 amounted ⁹¹ to discrimination. Persons promoted from the post of Upper Division Clerk to that of Office Superintendent Grade-II constituted one homogenous class and to divide them into those who were promoted prior to a date or after a date was arbitrary and violative of Article 14 and 16 of the Constitution. In this connection he relied on the Supreme Court judgment in D.S. NAKARA v. UNION OF INDIA (AIR 1983 SC 130). He, therefore, submitted that the pay of the applicants on their promotion to the post of Office Superintendent Grade-II should have been fixed after taking into account the special pay, which they drew earlier as Upper Division Clerks.

4. Shri M.S. Padmarajaiah, appearing for the respondents strongly opposed the contentions of Shri Narayanaswamy. As a result of a dispute between the staff side and the Government regarding the treatment of the special pay of Rs. 35/- on promotion, the matter was referred to arbitration. On arbitration it was decided in the first place that special pay would be taken into account for fixation of initial pay on promotion and secondly that the decision would be effective in respect of promotions made on and after 1.9.1985. Thus the date had not been picked out of a hat and was not arbitrary. The respondents were therefore, right in denying the benefit of the letter dated 1.3.1987 to the applicants who were promoted as Office Superintendents before 1.9.1985 and this did not involve any discrimination.

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5. I have considered the matter carefully. I may in this connection point out that applications involving this very issue came up for decision before me earlier and I have allowed those applications. Whatever may have been the process by which Government agreed to treat the special pay of Rs. 35/- as part of pay in the lower post for fixing the initial pay in the higher post, denying that benefit to persons who were promoted prior to a particular date cannot but be treated as arbitrary. I agree with Shri Narayanaswamy that persons promoted from the post of UDC to that of Office Superintendent Grade-II constitute one homogenous class and there is no intelligible differentia for classifying them into those who were promoted before and after a particular date. All that the date mentioned in Government's letter - - M 1.9.1985 could mean was, as held in Nakara's case, ^{that} the benefit would be extended from that date and not that the benefit would not be available to persons promoted as Office Superintendent Grade-II before that date. In my opinion this is the only construction that can be placed on Government's letter dated 1.9.1987 to avoid the charge of discrimination.

6. In view of the above I direct the respondents to notionally refix the initial pay of the applicants on their promotion as Office Superintendent Grade-II taking into account the special pay of Rs. 35/- being drawn by them prior to their promotion, but the actual financial benefit of such fixation should be given to them only on

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and from 1.9.1985; they will not be entitled to any arrears for the period prior to 1.9.1985.

8. The applications are disposed of on the above terms. But in the circumstances of the case, parties to bear their own costs.

Sd/-
MEMBER (A)



TRUE COPY

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