

REGISTERED

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Commercial Complex (BDA)
Indiranagar
Bangalore - 560 038

Dated : 6 APR 1988

APPLICATION NO 95 / 88(F)

W.P. NO. _____

Applicant

Shri S. Doraiswamy

To

Respondent

V/s

The Secy, M/o Urban Development, New Delhi
& 3 Ors

1. Shri S. Doraiswamy
174, II Phase, 12th Cross
J.P. Nagar
Bangalore - 560 078
2. The Secretary
Ministry of Urban Development
Nirman Bhavan
New Delhi - 110 011
3. The Director General of Works
Central Public Works Department
Nirman Bhavan
New Delhi - 110 011
4. The Superintending Engineer
Central Public Works Department
Bangalore Central Circle
No. 55/35, 2nd Main Road
Vyslikaval
Bangalore - 560 003

5. The Inspecting Asst. Commissioner
of Income - Tax
Range - 3
United India Building
Avasashi Road
Coimbatore - 641 018
6. Shri M. Vasudeva Rao
Central Govt. Sng 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 on 30-3-88.

Encl : As above

DEPUTY REGISTRAR
(JUDICIAL)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE

DATED THIS THE 30 th DAY OF MARCH , 1988.

Present : Hon'ble Sri Ch.RAMAKRISHNA RAO

MEMBER (J)

WJ
APPLICATION No. 95/88(F)

S.Doraiswamy,
No.174, II Phase,
12th Cross, J.P.Nagar,
Bangalore - 560 078.

...

Applicant

Vs.

1. Union of India,
represented by Secretary,
to Govt., M/o Urban Development,
Nirman Bhavan, N.Delhi - 11.
2. The Director General of Works,
C.P.W.D., Nirman Bhavan,
New Delhi - 11.
3. The Superintending Engineer,
C.P.W.D., Bangalore Central
Circle, No.55/35, 2nd Main
Road, Vyalikaval,
Bangalore - 3.
4. The Inspecting Asst. Commr
of Income-Tax, Range-3,
United India Bldg. Avanashi
Road, Coimbatore- 641018. ...

Respondents

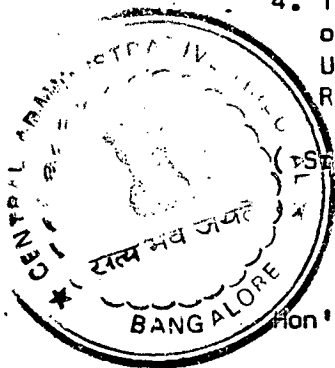
(Sri M.Vasudeva Rao ... Advocate)

This application has come up before the Tribunal today.

Hon'ble Sri Ch.Ramakrishna Rao, Member (J) made the following :

ORDER

Office Order No.95/83 dated 4.2.1983('00') was issued
by the Central Public Works Department, Directorate General of Works
(Respondent 2 : R2) appointing the applicant as Junior Engineer(Civil)
'JE' as Assistant Engineer(Civil):'AE' on regular basis with effect
from 25.1.1979 and placing him on probation for a period of two years.
Pursuant to the OO the pay of the applicant, who was working in the
pay scale of Rs.650-1200, was fixed at Rs.845/- on 1.12.79 and by



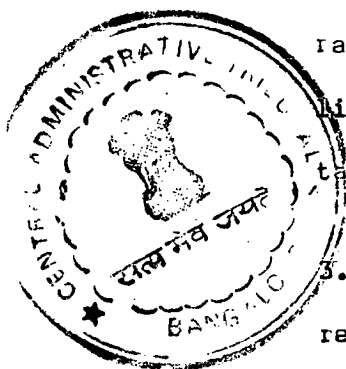
granting him the increments periodically due to him his pay was fixed at Rs.1000/- on 1.12.1983. There was provision in the scale for crossing 'efficiency bar'('EB') at the stage of Rs.1000/-. After the OD was issued, the applicant appeared for the departmental examination('DE') and qualified in the same on 10.12.1984. Thereupon an office memorandum dated 22.6.1987('OM') was issued which, in so far as it is material reads as follows :

Consequent upon re-fixation of seniority and his promotion as Assistant Engineer from the deemed date that is 31.12.1973, the due date of crossing efficiency bar by Sri S.Doraiswamy fell on 1.12.1979 at the stage of Rs.810/- and thereafter on 1.12.1984 at the stage of Rs.1000/-. The Efficiency Bar Committee considered his case and since Sri Doraiswamy had passed the departmental examination in Accounts held on 10.12.1984, he was allowed to cross efficiency bar at Rs.810/- with effect from 11.12.1984 (passing of examination being a pre-requisite for crossing efficiency bar) with benefit of past service with effect from 1.12.1979. He was also allowed to cross efficiency bar at the stage of Rs.1000/- with effect from 1.12.1984. However, the pay fixation for the period from 1.12.1979 to 10.12.84 was only notional without any arrears.

Aggrieved by the OM fixing his pay for the period from 1.12.1979 to 10.12.1984 only on notional basis and denying arrears due to him as also crossing of EB on the dates they fell due, the applicant has filed this application.

2. Sri M.V.Rao, learned counsel for the respondents, raises a preliminary objection that the application is barred by limitation inasmuch as the claim relating to arrears of pay pertains to the period prior to 11.12.84.

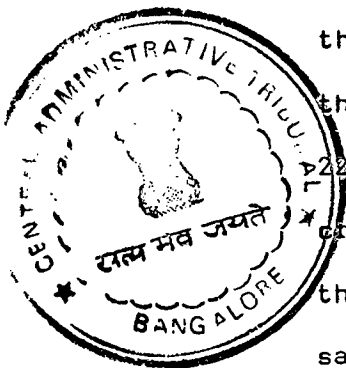
3. The applicant, appearing in person, submits that he received the communication dated 31.3.87 from R2 informing him that the arrears prior to 11.12.84 were not admissible as the pay for the period 1.12.79 to 11.12.84 was fixed only on notional basis. This was followed by an office order dated 14.4.87 issued by R3 wherein the notional fixation of pay was done for the period 1.12.79 to 11.12.84 and it was specifically stated therein that arrears were admissible only from 11.12.84 but not prior thereto. According to the applicant, he filed a W.P. in the High



Court of Karnataka which was transferred to this Tribunal and numbered as A.No.1306/86(T) and the judgement therein was pronounced on 14.12.86 issuing certain directions to the respondents. Pursuant thereto OM dated 22.6.1982 was issued by R2 denying him the pay for the period from 1.12.1979 to 10.12.84. In the said OM he was also denied the crossing of EB on two occasions, when they fell due and the benefit of crossing of EB was given only from 11.12.84. The applicant maintains that the present case has been filed within a year from the date of the OM and is therefore not hit by the bar of limitation.

4. I have considered the rival contentions carefully. Sri Rao is right in saying that the claim pertains to the period prior to 11.12.84. Had the matter stood only at that, the present claim would have been hit by the bar of limitation. But in the present case the notional fixation of pay due to the applicant in the scale of Rs.650-1200 for the period 1.12.79 to 11.12.84 was done in and by the communication dated 31.3.87 issued by R2 to R3. Pursuant to the orders passed by this Tribunal on 14.12.86, the OM dated 22.6.87 was issued regarding the notional fixation of pay and the crossing of EB. Aggrieved by the said OM the applicant has filed this application on 29.1.88. Viewed in this factual setting I am satisfied that the application is not barred by limitation.

5. Turning to the merits, the applicant strenuously contends that there was no justification whatever for denying him the arrears of pay and also crossing the EB at the appropriate stage. He developed his argument as follows : The OO says in unmistakable terms that he had been officiating as AE on ad-hoc basis and was appointed to officiate in the same capacity on regular basis with effect from 25.1.1979. Though he was placed on probation for two years it had expired on 25.1.1981 since he had discharged the duties



h/

attached to the post of AE satisfactorily during that period.

There is nothing in the language of the OO to suggest that the probation of two years was to commence after the OO was issued.

In view of this he must be deemed to have completed his probation satisfactorily on 25.1.1981. He availed of the first opportunity to appear at the DE after the OO was issued and passed on 10.12.1984. It was for no fault of his that he could not appear for the DE earlier and as a result of the belated issued of the OO, he should not be made to suffer in the matter of drawing his increments or in crossing the EB. He is, therefore, entitled to the arrears of pay and also the crossing of EB on the dates when he had to cross.

6. Sri Rao vehemently refutes the contention of the applicant as follows. The OO states in unmistakable terms that the applicant was appointed on regular basis as AE w.e.f. 25.1.79. He was also placed on probation for a period of two years. It is clear from this that the OO is only prospective in operation. Section 4 of the CPWD Manual (Vol I : 1975 edition) makes it incumbent on the applicant to qualify in the DE in accounts (3 papers) before he is allowed to cross EB in the post of AE. In fact, the applicant passed the DE only on 10.12.84 and he was given the benefit of the crossing of EB w.e.f. 11.12.84. The notional fixation of pay for the period prior to the passing of the DE by the applicant and allowing him to cross EB from the date of his passing the DE is, therefore not open to challenge.

7. I have considered the rival contentions carefully. Notional fixation of pay is normally resorted to in a case where a person has not actually shouldered the responsibilities of the post. But in the present case the applicant has actually discharged the duties attached to the post of AE from 25.1.79. Though he was appointed on regular basis by OO dated 4.2.83, he was actually



- 5 -
working in that post on ad hoc basis since 25.1.79 and for no fault of his the regularisation was delayed by 4 years. Therefore, the notional fixation of pay and denial of the arrears due to the applicant for the period 1.12.79 to 10.12.84 is not legally sustainable. Nor is it correct to deny the applicant the benefit of crossing of EB on the dates on which the increments fell due because he took the earliest opportunity of appearing at the DE and got through the same on 1.12.84. Granting of the increment on 11.12.84 after the applicant got through the DE would have been correct in a normal case but not in a case like the present where as already pointed out the applicant was not in a position to appear for the DE on any earlier date.

8. Taking all the facts and circumstances into consideration, I have no doubt in my mind that the benefit of the crossing of EB by the applicant in the present case should be given on the dates they fell due and not from the date he got through the DE.

9. The respondents are, therefore, directed to refix the pay due to the application for the period 1.12.79 to 11.12.84 in the light of the foregoing within two months from today.

10. The applicant claims that he is also entitled to arrears on account of House Rent Allowance (HRA). In the letter dated 5.3.87 addressed by the Inspecting Assistant Commissioner of Income Tax, Range 3, Coimbatore(R4) to R3 it is stated that the dues of HRA may be allowed if the claim of the applicant is in order. A copy of the same has been endorsed to the applicant. The claim of the applicant for arrears of HRA be, therefore, further examined as stated in the aforesaid letter and arrears, if due to the applicant, be paid within two months.

11. In the result the application is allowed. There will be no order as to costs.



TRUE COPY

[Signature]
DEPUTY REGISTRAR (JDL) 6/4/88
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE

Sd/-

CH. RAMAKRISHNA RAO

an.

(MEMBER J)

30.3.88

REGISTERED

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Commercial Complex (BDA)
Indiranagar
Bangalore - 560 038

Dated : 30 AUG 1988

CONTEMPT
PROCEEDINGS (CIVIL)

APPLICATION NO. 59 /88
IN APPLICATION NO. 95/88(F)
W.P. NO. _____

Applicant(s)

Shri S. Doraiswamy
To

V/s

Respondent(s)

The Secy, M/o Urban Development, New Delhi
& 3 Ors

1. Shri S. Doraiswamy
174, 12th Cross, II Phase
J.P. Nagar
Bangalore - 560 078
2. Shri S.K. Srinivasan
Advocate
No. 10, 7th Temple Road
15th Cross, Malleswaram
Bangalore - 560 003
3. The Secretary
Ministry of Urban Development
Nirman Bhavan
New Delhi - 110 011
4. The Director General of Works
Central Public Works Department
Nirman Bhavan
New Delhi - 110 011

5. The Superintending Engineer
Central Public Works Department
Bangalore Central Circle
No. 55/35, 2nd Main Road
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6. The Inspecting Asst. Commissioner
of Income - Tax (Range-3)
United India Building
Avanashi Road
Coimbatore - 641 018
7. Shri M. Vasudeva Rao
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 26-8-88.

Encl : As above


DEPUTY REGISTRAR
(JUDICIAL)

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

ORDER SHEET

C.P.(Civil)

Application No.....⁵⁹..... of 1988

Applicant

Respondent

S. Doraiswamy

V/s

**The Secy, M/o Urban Development,
New Delhi & 3 Ors**

Advocate for Applicant

Advocate for Respondent

S.K. Srinivasan

M. Vasudeva Rao

Date	Office Notes	Orders of Tribunal
		<p><u>VC & LHAR(AM)</u></p> <p>26-8-1988. <u>Order</u></p> <p>Applicant by Sri S.K.Srinivasan.</p> <p>Respondents by Sri M.Vasudev- Rao. Shri Vasudev Rao files a memo today stating that the respondents have complied with the Order dated 30-3-1988 made by this Tribunal in Application No.95 of 1988(F), in letter and spirit.</p> <p>Shri Srinivasan, learned Counsel for the applicant, very rightly does not dispute this position.</p> <p>In this view, the Contempt proceedings are liable to be</p> <p>(contd....3</p>




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

CP 59/88

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Order Sheet (contd)

Date	Office Notes	Orders of Tribunal
		<p>dropped. We, therefore, drop these contempt proceedings.</p> <p>But, in the circumstances of the case, we direct the parties to bear their own costs.</p> <p>Sd/- VICE CHAIRMAN</p> <p>Sd/- MEMBER (A). 26/5/88</p> <p>TRUE COPY</p> <p><i>[Signature]</i> for DEPUTY REGISTRAR (JULY) CENTRAL ADMINISTRATIVE TRIBUNAL BANGALORE</p>