

55

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: BANGALORE

Dated the 7th/8th Day of July, 1987.

Present

THE HON'BLE MR. JUSTICE K.S. PUTTASWAMY, VICE CHAIRMAN

And

THE HON'BLE MEMBER, SHRI L.H.A. REGO

APPLICATION NOS. 1327 TO 1332/86

M. Nanjunda Swamy, 33 years
S/o Sri Marikushaiah,
56, Jayalaxminilaya,
Ramakrishna Layout, Bangalore-16.

Applicant in
Appln. No. 1327/86

2. S. L. Ramakrishna, 30 years,
S/o S. D. Laxmipathiah
595, III Cross, V Main,
Hanumanthanagar, Bangalore-19.

-do- 1328/86

3. M. Basavaraju, 43 years,
S/o Sri D. C. Murgavalappa
707, 16th Cross, 25th Main,
J. P. Nagar, Bangalore-78.

-do- 1329/86

4. V. Ramachandran, 52 years,
S/o Sri G. Venkataramaiah,
H-1, Type III CPWD Quarters,
Vijayanagar, Bangalore-40.

-do- 1330/86

5. D. V. Bhuvaramurthy, 32 years,
S/o D. R. Venkoba Rao,
21, 4th Block, Geetha Colony,
Jayanagar, Bangalore-11.

-do- 1331/86

6. K. Krishnappa, 28 years
S/o Sri Kariyappa,
10/1, 13th Cross, 8th Main-
Road, Malleswaram, Bangalore-3.

-do- 1332/86

(Dr. M. S. Nagaraja, Advocate for the Applicants.)

-vs.-

The Accountant General
(Accounts),
Bangalore.

.. Respondents

contd.....



2. The Accountant General
(Audit), Bangalore.
3. The Comptroller and Auditor
General of India, New Delhi.
4. The Union of India
through its Secretary,
Ministry of Finance
(Deptt. of Expenditure)
New Delhi. .. Respondents.

(Shri M.S. Padmarajaiah, Standing Counsel for Central-
Government for respondents).

The applications coming on for hearing this
day, VICE CHAIRMAN made the following:

ORDER

These are transferred applications and are
received from the High Court of Karnataka under
Section 29 of the Administrative Tribunals Act, 1985
('Act').

2. On and from 26-1-1950 on which day the Consti-
tution of India came into force, an integrated depart-
ment of Government of India ('GOI') called the Indian
Audit and Accounts Department ('IA & AD') came into
existence. The IA & AD was and is headed by the
Comptroller and Auditor General of India ('C & AG')
appointed by the President of India under Article 148(1)
of the Constitution. On and from 26-1-1950, the said
department was attending to the audit and accounts

of

- 3 -

of GOI and other State Governments which position continued without any structural change till 29-2-1984.

3. With the experience gained from 1950 to 1980 and to improve the efficiency of audit and accounts from 1981 and onwards the C & AG made an in depth study of his department and some time in 1983 recommended to GOI to bifurcate the IA & AD department into two separate and distinct wings, branches or units, one to exclusively deal with 'audit' and the other to deal with 'accounts' with their own separate personnel. On an in depth examination of the recommendations made by the C & AG and consulting all interests, GOI approved his proposals in December, 1983. On the approval so accorded by GOI, the C & AG on 19-12-1983 had formulated a Scheme for bifurcation of the integrated IA & AD department into two separate and distinct wings from 1-3-1984 providing for all incidental and auxillary matters thereto. He had published the Scheme in the form of a brochure called "Manual of Instructions for restructuring or cadres in IA & AD". We will hereafter refer to this brochure as 'the Scheme'.

4. In pursuance of the Scheme, the authorised officers served notices on all the staff working in the department including the 6 applicants before us, to exercise their preference or option('options'). But, all the six applicants did not indicate or express their options



options to be absorbed in the 'audit wing' and had thus preferred to remain or continue in the 'accounts wing'. On 17-4-1984, the applicants approached the High Court, in Writ Petitions Nos.7411 to 7416 of 1984 challenging the Scheme and alternatively for extending the very scales of pay extended to the personnel of the 'Audit Wing'.

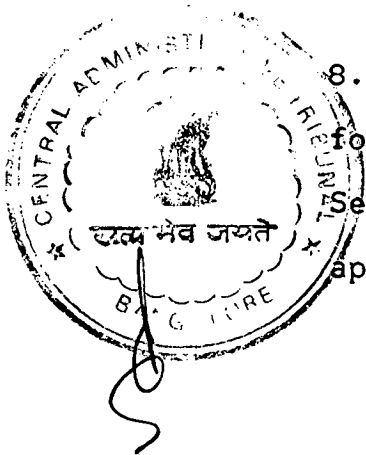
5. The applicants did not seek stay of operation of the Scheme and, therefore, Chandrakantaraj Urs, J., while issuing rule nisi in the cases, on 30-5-1984, did not stay its operation. In the absence of an order of stay, the Scheme has been implemented from the appointed date namely, 1-3-1984. In other words on and from 1-3-1984, the Audit and Accounts Wings have become separate and distinct in all respects.

6. The applicants have challenged the Scheme on more than one ground, which will be noticed and dealt by us in due course.

7. In their reply, the respondents have justified the Scheme and the denial of higher scales of pay to the personnel of the Accounts Wing.

8. Dr.M.S.Nagaraja, learned Advocate, has appeared for the applicants. Shri M.S.Padmarajaiah, learned Senior Standing Counsel for Central Government, has appeared for the respondents.

9.Dr.



9. Dr. Nagaraja contends, that one and the only authority who is competent to restructure the integrated IA & AD into two wings or branches, was the President of India exercising legislative powers conferred on him by sub-Article (5) of Article 148 of the Constitution, and that since the President had not exercised such power, the re-structuring of the IA & AD by A & AG into two wings, from 1-3-1984 was unauthorised and illegal. In support of his contention, Dr. Nagaraja strongly relies on the rulings of the Punjab and Haryana High Court in AMRIK SINGH vs. UNION OF INDIA & ORS/[1985(1) SLR 457 and MOHAN LAL MEHROTRA & ORS. -vs.- COMPTROLLER AND AUDITOR GENERAL OF INDIA, NEW DELHI & ORS.(1980 SLJ 433).

10. Shri Padmarajaiah contends, that the power conferred under sub-Article (5) of Article 148 of the Constitution was not legislative but executive power and that power exercised by GOI, was authorised under Arts. 55 and 73 of the Constitution, and that being so, the approval accorded by GOI and the Scheme published by the C & AG in conformity with such approval, was valid and legal. In support of his contention, Shri Padmarajaiah strongly relies on a Division Bench ruling of the Madras Bench of this Tribunal in B. RANGANATHAN vs. THE COMPTROLLER AND AUDITOR GENERAL OF INDIA, NEW DELHI AND TWO OTHERS (Transferred Application No. 987/86, decided on 9-2-1987) and a Division Bench ruling of the Allahabad High Court in SUDHISH CHANDRA & ORS. -vs.- COMPTROLLER AND AUDITOR GENERAL OF INDIA & ANR. (1986(1) SLJ, 136).



11. The objectives with which bifurcation was formulated and effected has been succinctly set out by the C & AG in the Scheme, at para 1.1.1, in these words:

"Objectives: The primary purpose of restructuring of the offices of the State Accountants General is to develop an organisational pattern suited to the altered needs of audit and to improve the maintenance of the accounts of the State Government transactions. With the phenomenal growth of plan expenditure, multi-purpose development projects in the areas of power, irrigation and agriculture there is a pressing need to restructure the offices of AsG and to evolve a suitable staffing pattern to meet the needs of audit and accounts. It is now considered unlikely that a composite corpus could develop expertise in such a wide gamut of functions as to be rotated between works audit, establishment audit, accounts compilation, audit of state receipts, audit of electricity boards and transport undertakings, etc. The complex requirements of these functions have made it imperative to create cadres of staff at all levels specifically trained for and suited to the functions. For some time the CAG has been considering steps to identify the specialised job needs for convenient groups of the audit and accounts functions and to evolve induction, training and placement policies based on these specialised job needs. It is the intention to identify the skills required to be developed by the staff and regroup them into compact areas with well defined objectives which are not too numerous or diffused. Besides channelising the

existing



existing reservoir of skills and upgrading these, such a measure would also serve to bring into sharp focus the duties and powers of the CAG and fulfil these duties and responsibilities more effectively and efficiently. Not only is the quality of audit expected to improve but also the Accounting and Entitlement Organisation would serve the community of Government employees better as well as assist in better management of Government functions."

In order to achieve these objectives, GOI had approved the proposal of the C & AG to bifurcate the integrated IA & AD department into two separate and distinct wings.

12. On complex administrative matters relating to restructuring of a department, Courts and Tribunals are ill-equipped to delve into the same from the administrative angle as to its aptness and comment thereon. On these matters, the best Judges are the C & AG and the GOI. We cannot examine the same also as if we are a Court of appeal. We must, therefore, accept the judgment of GOI and C & AG to bifurcate the IA & AD into two wings and only examine its legality, which this Tribunal is undoubtedly competent to do.

13. We have earlier noticed, that the proposals placed by the C & AG were approved by the GOI. Without any doubt, that approval accorded by GOI was in exercise of its executive powers available to it under the Constitution.

14. The



14. The Scheme published by the C & AG though at first sight appears to give an impression that it had been formulated, decided and published by him, without the approval of GOI thereto, that is not the real position. The Scheme was really a Scheme drawn up and decided by GOI and had not been drawn up by the C & AG himself, as it appears on the published Scheme. We must, therefore, proceed to examine the validity of the Scheme, as if it was made by Government only in exercise of its executive powers.

15. In Ranganathan's case, the very Scheme had been challenged before the Madras High Court, which ultimately came to be decided by the Madras Bench of this Tribunal. In examining this very challenge in Ranganathan's case, Justice Ramanujam, VC, speaking for the Bench, expressed thus:

"The Supreme Court in Duraiswami's case, apart from dealing with the relative scope and ambit of Art.148(5) and 309 of the Constitution, has also dealt with the question as to whether the C & AG could issue administrative instructions touching the service conditions. After referring to Rule 5 of 1974 Rules, dealing with recruitment to the Service, Rule 6 dealing with appointments to the service and Rule 7 dealing with seniority, the Supreme Court felt that every one of the said Rules enable the C & AG to issue orders and instructions from time to time. Supreme Court also

referred



referred to Rule 10 as empowering the C & AG to issue, from time to time, such general or special instructions or orders as are necessary or expedient for the purpose of giving effect to the Rules. In that case an administrative instruction dealing with the fixation of seniority, which is clearly a service condition comprised in Rule 7 of the 1974 Rules was upheld on the ground that C & AG had the power to issue instructions as Rule 7 authorises the same and that the entrustment of such power on C & AG to issue orders or instructions in his discretion does not constitute excessive delegation of legislative power. While dealing with that question, the Supreme Court observed,

"The C & AG is a high ranking constitutional authority and can be expected to act according to the needs of the service and without arbitrariness. He is the Constitutional head of one of the most important departments of the State and is expected to know what the department requires and how best to fulfil those requirements. We are unable to hold that the power conferred on him under the Rules violates the principles against excessive delegation."

Based on the said reasoning in the said decision of the Supreme Court, the learned Counsel for the respondent submits that the President can delegate this executive functions, such as, framing of the Rules under Art.148(5) to the C & AG and that the decision in Sardari Lal's case [1971(1) SCC,411] holding that the President has to be satisfied personally in exercise of executive power or function and those functions cannot be delegated, is no longer good law in view of the later decision of the Supreme Court in Samsher Singh's

case



case [1974(2) SCC 831]. He relied on Rule 10 of 1974 Rules as empowering the C & AG to issue such general or special instructions as are necessary or expedient to give effect to the Rules and contends that the Scheme of restructuring the cadres brought in by the instructions are necessary and expedient for properly giving effect to the 1974 Rules. On a due consideration of the matter, we are inclined to hold that the C & AG is empowered under Rule 10 of the Rules to issue administrative instructions regarding the scheme of restructuring the cadres which will result in the improvement of the conditions of service. As already said, the staff had been agitating for restructuring the cadres and upgradation of pay scales and their demand had been met by bringing in the scheme by way of administrative instructions under Rule 10 for fully effectuating the 1974 Rules. So long as the scheme of restructuring the cadres and upgrading of certain posts, does not run counter to the 1974 Rules, it can be introduced by the C & AG in the form of instructions. The restructuring scheme consists of two parts: (i) separation of the combined cadre of Audit and Accounts into two separate cadres, for purposes with an option to the employee to opt to any of the two cadres, and (ii) upgrading of 80% posts in the audit wing on the basis of selection. The first part does not affect any of the service conditions laid down in the 1974 Rules framed under Art.148(5) and as such, the C & AG is empowered to issue administrative instructions in this regard in

view

view of Rule 10 of the said Rules. As regards the second part dealing with selection and promotion for upgraded posts, though it is modification of a service condition, Rules 5 and 6 enable the C & AG to issue administrative instructions in that regard. Rules 5 and 6 deals with recruitment and appointment to service and these rules specifically authorise the C & AG to issue orders and instructions in relation to the matters covered by them. These rules have been held by the Supreme Court in Doraiswamy's case not to violate the principle against excessive delegation. Thus when the 1974 Rules delegates the power to issue orders and instructions to the C & AG in relation to the matters covered by the Rules, we cannot say that the C & AG has acted without jurisdiction in formulating the Scheme.

However, according to the applicant if such a power is taken to vest with the C & AG, then it will run counter to the constitutional provision under Art.148(5) under which the power to prescribe conditions of service is vested only on the President, who will exercise that power, after consultation with C & AG. If the C & AG is allowed to prescribe, alter or modify the conditions of service, without reference to the President, by administrative and non-statutory instructions it will clearly violate Art.148(5) of the Constitution. Here the service conditions have been prescribed by the President, after consultation with the C & AG under the 1974 Rules. The Supreme - Court in Duraiswamy's case has dealt with the power of the C & AG to alter or modify the

existing



existing instructions pertaining to service conditions, by issue of fresh instructions, but that decision cannot be taken to enable the C & AG to alter any service conditions of the employees serving in IA & AD nor did the Supreme Court enable C & AG to bypass Art.148(5) and deal with the service conditions of the employees by issuing non-statutory instructions.

In answer to the above contention of the applicant, the counsel for the respondent contends that the scheme of restructuring having been brought in after elaborate discussion between the C & AG and the Govt. of India, through the Ministry of Finance and after approval of the Scheme by the Finance Minister, it can be taken to be the Rules framed under Art.148(5) as the decision of the Finance Minister taken under the Rules of Business, after consultation with the C & AG, is the decision of the President. It is said that according to the Rules of business, the subject of Audit and Accounts came within the business allotted to the Finance Minister and as such, the order or decision of the Finance Minister should be taken to be an order or decision of the President and that the executive functions entrusted to the President under the Constitution is in actual practice carried on by the Prime Minister and his colleagues, as per the allocation of Business under the Business Rules. In support of this plea, the Counsel for respondent relies on the decision of the Supreme Court in Shamshir Singh -vs.-

State

State of Punjab (AIR 1974(2) SC.831),
wherein it was observed,

"We are of the view that the President means, for all practical purposes, the Minister or the Council of Ministers, as the case may be, and his opinion, satisfaction or decisions constitutionally secured when his Ministers arrive at such opinion, satisfaction or decision."

Their Lordships of the Supreme Court
in that case pointed out as follows:-

"Under the Cabinet System of Government, the President is the formal or the Constitutional Head of the Executive and though the executive powers of the Union is vested in him, the real executive powers are vested only in the Ministers of the Cabinet and that there is a Council of Ministers with the Prime Minister as its Head to aid and advice the President in the exercise of his functions and in this respect Art.74(1), is mandatory".

This is, however, subject to two exceptions,
(i) When the President is required by the Constitution to exercise his function in his discretion and (ii) when the President is required to satisfy himself as to the existence of certain facts or state of affairs. Except the two functions referred to above, the other executive functions can also be delegated. The decision in Saradari Lal's case [1971(1) SCC,411] holding that the executive functions of the President cannot be delegated is no longer good.

According



68

According to the respondents, Art.148(5) of the Constitution deals with the power of the President to frame Rules, dealing with service conditions of persons serving in IA & AD and the administrative powers of C & AG after consultation with the latter. Even assuming that the administrative powers of the C & AG detailed in 1974 Rules are not available to C & AG, since the decision of the concerned Minister under the Rules of Business made under Art.77(3) is the decision of the President, the scheme of restructuring should be taken to have been framed by the President, after consultation with the C & AG. Thus the contention of the respondents is that though the scheme in question was brought in the form of instructions issued by the C & AG, by virtue of the power vested in him under the 1974 Rules, the said scheme can also be taken to have been framed by the President, after consultation with the C & AG under Art.148(5).

It is significant to note that under Entry 76 of List-I of VII Schedule to the Constitution, the Parliament can make laws in respect of "Audit of the account of the Union and the States". Under Art.73(a), the executive power of the Union shall extend to the matters with respect to which Parliament has power to make laws. Art.53 says that the executive power of the Union shall be vested in the President and shall be exercised by him directly through officers subordinate to him in accordance with the Constitution. Thus the scheme framed by

the



the Finance Minister as per the allotment of Business under the Business - Rules made by the President under Art. 77(3) is a scheme formulated by the President, in consultation with C & AG as required by Art.148(5).

It is, no doubt, true that initially the proposal to restructure the cadres in the IA & AD emanated from the C & AG. Later there was a detailed discussion between the Staff Side in the Departmental Council on the one hand and the Finance Minister, in consultation with the C & AG on the other and ultimately the scheme has been approved by the Minister for Finance. If the decision of the Finance Minister as per the Business Rules is taken to be the decision of the President, then the scheme should be taken to have been framed by the President, in consultation with the C & AG. No doubt, the proposal emanated from C & AG, the consultee under Art.148(5) and that was approved by the Finance Minister and the scheme did not emanate from the Finance Ministry, the consultor. But whether the proposal emanates from the C & AG or the Finance Ministry, the consultation emanated under Art.148(5) has taken place. The word 'consultation' normally implies the meeting of minds of both the Consultor and the Consultee on a particular topic and in this case admittedly, there was a meeting of minds on the question as to the nature of and the necessity for the scheme of restructuring. Though the scheme of restructuring was introduced in the form of a supplement to the Manual of

Standing



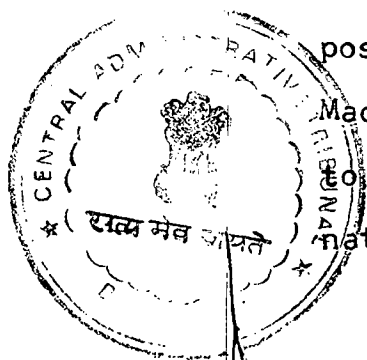
Standing Orders, so long as it satisfies the statutory preliminary requirements, it can be construed as Rules framed under Art.148(5). No doubt, the impugned scheme is not expressed to be taken in the name of the President, as required in Art.77(1) read with Art.148(5). Article 77 essentially relates to the form in which the particular executive action is to be expressed and being a matter of form and not of substance, its provisions are merely directory and not mandatory. Even if there is no strict compliance with Art.77(1), if there is some reliable material on record to show that the decision has been taken by the appropriate authority, the validity of the decision cannot be challenged as contravening Art.77(1). In 1952-SC-312, it has been held that to comply with Art.77(1), it is sufficient if the substance of the requirement is satisfied and the order need not be expressed in exact terms of that provision.

In this view of the matter, we cannot agree with the applicant that the impugned scheme of restructuring has been issued by C & AG in contravention of Art.148(5) of the Constitution."

In these paragraphs, the Madras Bench has rejected the very contention urged by the applicants before us.

16. Dr.Nagaraja without rightly disputing the above position contends, that the decision rendered by the Madras Bench in Ranganathan's case was plainly opposed to Article 148(5) of the Constitution and the true nature of power conferred thereto, was plainly erroneous

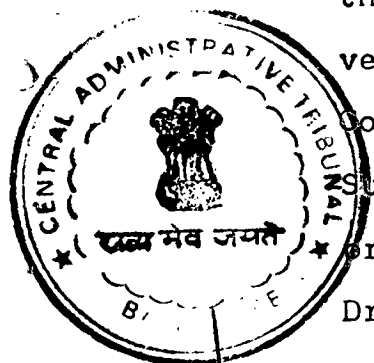
and



and the same therefore, requires to be dissented by us and the question referred to a larger Bench for its opinion. Shri Padmarajaiah vehemently opposes these submissions of Dr.Nagaraja.

17. We must, at the very outset state, that the ruling rendered in Ranganathan's case by the Madras Bench which is a co-ordinate Bench of this Tribunal is binding on us. But, this does not necessarily mean that this Bench cannot doubt the correctness of the same and refer it to a larger Bench. Whether we should do so or not is the precise question that calls for our examination.

18. The principle of 'Stare Decisis', recognised in English Law of precedents, followed in India, dealt by Rupert Cross in his treatise 'Precedents in English Law', should itself commend us, to follow the principle enunciated on a detailed examination by the Madras Bench in Ranganathan's case. Even if two views are possible on the question, then also we should be reluctant to dissent from the view taken by the Madras Bench, but follow the same. We should dissent only when we find that the principle enunciated is clearly opposed to the very plain language of the relevant article of the Constitution or opposed to the law declared by the Supreme Court and not otherwise. Bearing this salutary principle, we now propose to examine the submissions of Dr.Nagaraja.



19. We have carefully read the order of the Madras Bench in Ranganathan's case and examined every one of the criticisms mounted by Dr. Nagaraja against the same. Even after that, we are satisfied that the views expressed by the Madras Bench on the scope and ambit of Article 148(5) of the Constitution, is a possible view and is not plainly opposed to that Article and any ruling of the Supreme Court on that provision. We must, therefore, decline to dissent from the view expressed by the Madras Bench in Ranganathan's case and prefer to follow the same.

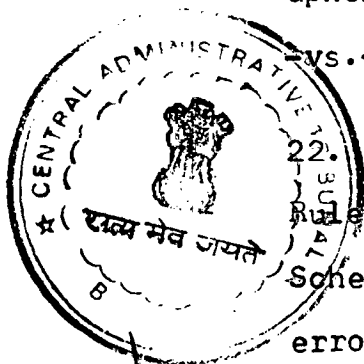
20. In Sudhish Chandra's case, a Division Bench of the Allahabad High Court had also expressed that the power conferred by Article 148(5) was executive and not legislative. We are in respectful agreement with the views expressed by their Lordships in this case.

21. In rejecting the challenge of the applicants to the Scheme, the Madras Bench had also relied on Rule 10 of the Indian Audit and Accounts Department (Subordinate Accounts Services and Subordinate Railway Audit Service) Rule, 1974 ('1974 Rules'), the validity of which had been upheld by the Supreme Court in ACCOUNTANT GENERAL AND ANR.

vs.- S.DORAISWAMY (AIR 1981 S.C. 783 = 1981 SCC (L&S) 574).

22. Dr. Nagaraja contends, that Rule 10 of the 1974 Rules, had absolutely no application, to sustain the Scheme and that view of the Madras Bench was patently erroneous and calls for our dissent. In driving home

this



- 19 -

this point, Dr.Nagaraja relies on the later Rules made by the President and published in the Audit - Bulletin Quarterly, Vol.12 of 1986 June Part, as if the power conferred on him was legislative.

23. On the earlier view we have expressed, we consider it wholly unnecessary to examine these aspects and express our views. We therefore, leave them open.

24. On the foregoing discussion, we hold that the power conferred by sub-Article (5) of Article 148 of the Constitution on the President, was only executive but not legislative power and the scheme formulated and approved by GOI but merely published by the C & AG, was within their power and valid.

25. In order to achieve the objectives set out in the Scheme, the integrated department of IA & AD had been bifurcated into two separate and distinct wings on and from 1-3-1984. On and from 1-3-1984, two separate and distinct wings have come into existence and are functioning with their special and distinct features, personnel and avenues of promotion. The Scheme has been implemented in all its detail from 1-3-1984.

26. Assuming for purposes of argument that there are infirmities in the decisions taken by one or the other authority, then also if the Scheme is annulled at this stage, it is now almost impossible for GOI, and

the



the C & AG to put back the clock to the position that existed prior to 1-3-1984. The events that have developed from 1-3-1984 make it virtually impossible for GOI to retrace its steps and undo what has been done so far from 1-3-1984 and restore the position that existed prior to 1-3-1984. We cannot be oblivious of this situation and therefore in this background decline to interfere, notwithstanding one or the other infirmity in any of the orders made by Government and the C & AG.

27. Dr. Nagaraja next contends, that the persons allocated to the Accounts Wing, who possessed similar qualifications before and after entry into the Department, were performing duties of same nature, as those allocated to the Audit Wing, and that being so, allowing them lower scales of pay than those allowed to the Audit - Wing was violative of Articles 14 and 16 of the Constitution. On this aspect, Dr. Nagaraja relies on the recommendations of the Fourth Pay Commission at para-1138 and the latest order of GOI made on 12-6-1987. While relying on the order dated 12-6-1987 of the GOI, Dr. Nagaraja contends, that on the very terms of that order, the applicants were entitled to the revised pay scales sanctioned in that order from 1-1-1986, as in the case of all other civil servants of the Union of India.

28. Shri Padmarajaiah contends that the inherent distinctions and differences between the Audit and the Accounts Wings, justified the award of higher scales

of



of pay to those working in the former and the same was not irrational and arbitrary and was not violative of Articles 14 and 16 of the Constitution. On the claim of the applicants for revised pay scales from 1-1-1986, Sri Padmarajaiah contends that the decision of GOI extending the revised pay scales being a concession, the same cannot be extended by the Tribunal from any earlier date and from 1-1-1986.

29. We first propose to examine the claims of the applicants for revised pay scales from 1-1-1986.

30. The true scope and ambit of Article 14 of the Constitution, has been explained by the Supreme Court in a large number of cases. In AIR 1958 SC 538 (RAMA-KRISHNA DALMIA -vs.- JUSTICE TENDOLKAR) and AIR 1979 SC (Re: Special Courts Bills case), the Supreme Court had reviewed all the earlier cases and had restated all the facets of Article 14 of the Constitution. The new dimension of Article 14 of the Constitution, namely, that arbitrariness was the very antithesis of the rule of law enshrined in Article 14 of the Constitution, evolved in E.P.ROYAPPA -vs.- STATE OF TAMIL NADU (AIR 1974 S.C. 555) has been elaborated and explained by the Supreme Court in MANEKA GANDHI -vs.- UNION OF INDIA (AIR 1978 SC 597). Bearing the principles enunciated in all these cases, we must examine the claims of the applicants based on Article 14 of the Constitution.



31. The

31. The order made by GOI on 12-6-1987 reads
thus:

"No. F.5(32)-E.III/86-Pt. II
Government of India
Ministry of Finance
Department of Expenditure

New Delhi,
the 12th June 1987

Office Memorandum

Sub: Restructuring of Accounts
Staff in Organised Accounts
Cadres.

Based on the recommendation of the
Fourth Central Pay Commission the scales
of pay for Auditors and Section Officers
in Audit stream of Indian Audit & Accounts
Department (IA & AD) is on the following
lines:

	<u>Pre-revised</u> Rs.	<u>Revised</u> Rs.	
1. Assistant Audit Officer:	650-30-740-35- 880-EB-40-1040	2000-60- 2300-EB- 75-3200.	80%
2. Section - Officer:	500-20-700-EB- 25-900.	1640-60- 2600-EB- 75-2900.	20%
3. Senior Audi- tor:	425-15-500- EB-15-560-20- 700-EB-25-800	1400-40- 1600-50- 2300-EB- 60-2600.	80%
4. Auditor:	330-10-380-EB- 12-500-EB-15- 560.	1200-30- 1560-EB- 40-2040.	20%

2. The Fourth Central Pay Commission vide
para 11.38 of Part-I of its Report have observed
that the Audit and Accounts functions, are comple-
mentary to each other and are generally performed

in



in many Government Offices in an integrated manner which is necessary for their effective functioning. Accordingly, the Pay Commission have recommended that there should be broad parity in the pay scales of the staff in IA & AD and other Accounts organisations. It has further recommended that the proposed scales of pay of Rs.1400-2600 and Rs.2000-3200 may be treated as functional grades in future and that there will be no selection grade for any of these posts. As regards the number of posts in the higher functional scales, the Commission left this matter for the Government to decide.

3. The revised scales of pay for the Accounts staff in Organised Accounts Cadres under the Controller General of Defence Accounts, Controller General of Accounts, Departments of Posts and Telecommunications and also in Indian Audit and Accounts Department at par with Audit stream have already been notified vide this Ministry's Notifications Nos.F. .../IC/ 86 dated 13-9-1986 and 22-9-1986 respectively. In accordance with these modifications certain persons have already been allowed the higher revised scales of pay subject to the conditions laid down therein.

4. The question regarding number of posts to be placed in the higher scales of pay has been under the consideration of the Government and it has now been decided that the ratio of number of posts in higher and lower scales in the Organised Accounts

cadres



cadres as well as in Accounts Wing of the IA & AD may be as follows:

- | | | |
|-------------------------|-------------------------------------|-----|
| i) Section Officer (SG) | Rs. 2000-60-2300-EB-75-3200 | 80% |
| ii) Section Officer | Rs. 1640-60-2600-EB-75-2900 | 20% |
| iii) Senior Accountant | Rs. 1400-40-1600-50-2300-EB-60-2600 | 80% |
| iv) Junior Accountant | Rs. 1200-30-1560-EB-40-2040 | 20% |

The designations in different Organised Accounts cadres may be different. In such cases also the pay structure on these lines may be decided.

5. These orders take effect from 1.4.1987. The respective cadre controlling authorities may now take necessary action to prescribe criteria for appointment to the higher functional grades requiring promotion to the grades of Rs. 1400-40-1600-50-2300-EB-60-2600 and Rs. 2000-60-2300-EB-75-3200 on the same lines as adopted for Audit stream and thereafter take necessary action to implement these orders.

6. The orders in respect of Railway Accounts organisation will issued separately.

7. These orders issued in consultation with the Comptroller and Auditor General of India in so far as these relate to IA & AD.

Hindi version is attached.

Sd/-
(A.N.SINHA)
Director

To

1. The Comptroller & Auditor General of India (with usual number of spare copies) (Shri. P.K. Lahiri, Director (Staff)).
2. Financial Adviser (Defence Services)
3. Comptroller General of Accounts, Ministry of Finance
4. Member (Finance), Department of Posts.
5. Member (Finance), Department of Telecommunications.

Copy forwarded to Financial Commissioner (Railways Railway Board for issue of similar orders for Railway Accounts Organisation.

Sd/-
(A.N.SINHA)
DIRECTOR. "



In this order, GOI had accepted the claim of those working in the Accounts Wing for parity with the Audit Wing. But, in doing so, it had restricted or allowed the same from 1-4-1987. This has been obviously done on the recommendations of the Fourth - Pay Commission.

32. The Fourth Pay Commission presided over by Justice Singal, examined the revision of pay scales in respect of all the civil servants of the Union of India in depth and submitted its detailed recommendations to the GOI. On those recommendations, GOI had made its orders, giving effect to the revision of pay-scales, to all Departments of the GOI from 1-1-1986. The basis for making the order on 12-6-1987, was the recommendations of the Fourth Pay Commission and none other.

33. While GOI had generously allowed revision of pay scales from 1-1-1986 to almost all its employees, it had for no valid reason allowed the same, with effect from only 1-4-1987, to those working in the Accounts - Wing. The order itself does not given any reasons for making such an invidious distinction only to those working in the Accounts Wing. Shri Padmarajaiah, except for a vehement assertion that the same had been properly made, did not give any satisfactory and convincing reasons for the same.

34. We are of the view that there are no reasons whatsoever for allowing the benefit of revised pay scales only to Accounts Wing with effect from 1-4-1987 and not

from

from 1-1-1986, as is the case of all other civil servants in the GOI whose number probably exceeds 50 lakhs and that in any event, this was a case of irrational classification without any nexus to the avowed objective and was therefore clearly violative of Article 14 of the Constitution. We are also of the view, to borrow the language of Justice Desai, in D.S. NAKARA -vs.- UNION OF INDIA [1983(1) SCC 305] that the GOI had "picked up the date, namely, 1-4-1987 really from a hat" with caprice, which violates Article 14 of the Constitution. From this, it follows that the claim of the applicants for extending to them revised pay scales sanctioned by GOI in its order No.F.5(32)-E.III/86-Pt.II dated 12-6-1987, from 1-1-1986 instead of from 1-4-1987 calls for our acceptance.

35. We now pass on to examine the first claim of the applicants.

36. On the formulation of the Scheme which spells out slightly higher scales of pay for those who had opted for the Audit Wing and slightly lower scales of pay for those opted for the Accounts Wing, the applicants were given the option or preference to work either in the Audit or the Accounts Wing. But, the applicants for reasons best known to them, which in any event is not material for our purpose, opted to remain in the Accounts Wing. When the applicants with open eyes had opted to remain in the Accounts Wing,

which

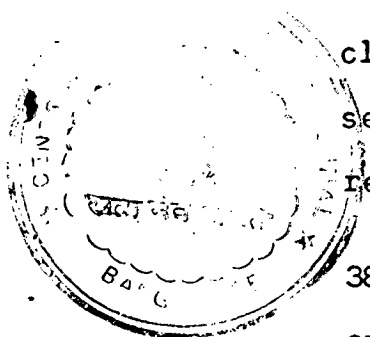


which provided for lower scales of pay, then they cannot complain that they have not been given higher scales of pay as sanctioned to the Audit Wing. On this short ground itself, we must reject this claim of the applicants, without examining all other questions. But, notwithstanding this, we will now also examine the merits of this claim of the applicants.

37. With due regard to the nature of the duties and various other relevant factors, GOI had sanctioned slightly higher scales of pay to the personnel of the Audit Wing. We cannot say that they are all unreal and irrelevant and have no nexus to the objective sought to be achieved. The fact that the qualifications inclusive of training before and after entering the integrated IA and AD were similar, in the case of the personnel in the Audit and the Accounts Wings, does not necessarily imply that there cannot be differences after bifurcation. We are, therefore, of the view that the orders allowing higher scales of pay to personnel of the Audit Wing and not to the personnel of the Accounts Wing, satisfies the twin tests of a valid classification and is not also arbitrary. We, therefore, see no merit in this contention of Dr. Nagaraja and we reject the same.

38. Before us, there are only 6 applicants. We can only direct the respondents to extend the benefit of

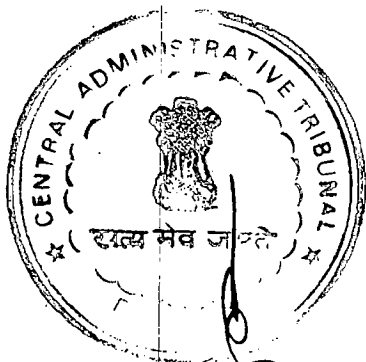
revised



revised scales of pay only to them, with effect from 1-1-1986. But, this does not necessarily mean that the respondents cannot and should not extend the same to all others who are similarly situated but had not approached this Tribunal. We consider it proper that the respondents themselves will do so, without driving others to approach this Tribunal or the Supreme Court. We, do hope and trust that they will do so.

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

- i) We dismiss these applications in so far as they challenge the Manual of Instructions for Restructuring of cadres in IA & AD issued by the Comptroller and Auditor General of India on 19-12-1983 (Annexure-A);
- ii) We declare that the applicants are entitled for the revised pay scales extended by the GOI in its order No.F.5(32)-E.III/86-Pt.II dated 12-6-1987, from 1-1-1986.
- iii) We direct the respondents to fix the pay scales of the applicants in the revised pay scales in terms of the order made by GOI on 12-6-1987, from 1-1-1986 and extend all such consequential monetary benefits flowing from the same from that date.



- 29 -

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

(K. S. PUTTASWAMY)
VICE CHAIRMAN.

8/7/1986

(L. H. A. REGO) / 87-987
MEMBER (A).

ORDERS ON THE ORAL APPLICATION FOR STAY,
MADE BY THE RESPONDENTS.

Immediately after we dictated the above order allowing the applications to the extent of the claims made by the applicants for revision of pay scales from 1-1-1986, Shri Padmarajaiah sought stay of the operation of our order to that extent for a period of 90 days from this day, to enable the respondents to obtain an order copy of this Tribunal, file SLPs and move for stay before the Hon'ble Supreme Court.

2. Dr. M.S.Nagaraja opposes the prayer made by Shri Padmarajaiah.

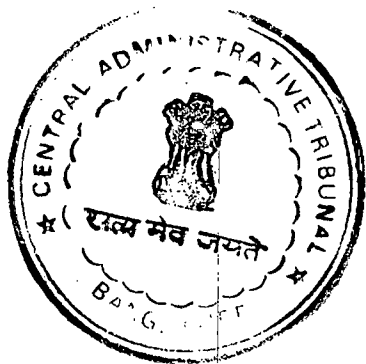
3. We



3. We have accepted the claims of the applicants for revision of pay scales for the first time in these cases from 1-1-1986 to 31-3-1987.

4. When the respondents propose to challenge that part of the order which has granted considerable financial benefits to the applicants, which has necessarily to be extended to a large number of employees also, we consider it proper to grant the request of the respondents for a reasonable time. We are of the view that the time sought by Shri Padma-
rajaiah is fair and reasonable.

5. In the light of our above discussion, we allow the oral application made by the respondents and stay the operation of our order, for a period of 90 days from this day or till the Hon'ble Supreme Court considers the applications of the respondents for stay whichever is earlier, to the extent it has directed the respondents to extend the revised pay-scales to the applicants from 1-1-1986 to 31-3-1987.



TRUE COPY

[Signature] 6/7/88
SECTION OFFICER
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE

[Signature]
(V.S. PILLASWAMY)
VICE CHAIRMAN

[Signature] 8.7.1987
(L.H.A. REGO)
MEMBER(A)

REGISTERED

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Commercial Complex(BDA)
Indiranagar
Bangalore - 560 038

Dated : 7 OCT 1988

REVIEW APPLICATION NOS. 70 to 75/88
IN APPLICATION NOS. 1327 to 1332/86(T)
AND
APPLICATION NOS. 1510 to 1515/88(F)

Applicants

Shri M. Vasanthababu & 5 Ors

To

1. Shri M. Vasanthababu
Senior Auditor
ECPA Section of
Accountant General (Audit - I)
New Building
Bangalore
2. Shri V.N. Jakati
Senior Auditor RA (State)
Accountant General Audit - II
R.A. Building
Seshadripuram
Bangalore
3. Shri K. Vinayaka
Senior Auditor
Accountant General Audit-I
Vyalikaval Building
Bangalore - 560 003
4. Shri S.N. Ahmed Bakshi
Senior Auditor
Accountant General Audit-I
Vyalikaval Building
Bangalore - 560 003

Respondents

V/s Shri M. Nanjundaswamy & 9 Ors

5. Shri R. Kantharaj
Senior Auditor
Accountant General Audit-II
Accountant General Office
Bangalore - 560 001
6. Shri K.R. Ranganatham
Senior Auditor
Accountant General Audit-I
Accountant General Office
Bangalore - 560 001
7. Shri M. Narayanaswamy
Advocate
844, (Upstairs)
V Block, Rajajinagar
Bangalore - 560 010
8. Shri M. Nanjundaswamy
56, Jayalakshmi Nilaya
Ramakrishna Layout
Bangalore - 560 016
9. Shri S.L. Ramakrishna
No. 595, III Cross, V Main
Hanumanthnagar
Bangalore - 560 019

....2

Issued
K. H. K.
7-10-88

97c

10. Shri M. Basavaraju
No. 707, 16th Cross, 25th Main
J.P. Nagar
Bangalore - 560 078
11. Shri V. Ramachandran
H-1, Type III CPWD Quarters
Vijayanagar
Bangalore - 560 040
12. Shri D.V. Chuvaramurthy
21, 4th Block, Goethe Colony
Jayanagar
Bangalore - 560 011
13. Shri K. Krishnappa
10/1, 13th Cross, 8th Main
Malleshwaram
Bangalore - 560 003
14. The Accountant General (Accounts)
Bangalore - 560 001
15. The Accountant General (Audit)
Bangalore - 560 001
16. The Comptroller & Auditor
General of India
No. 10, Bahadur Shah Zafar Marg
New Delhi - 110 002
17. The Secretary
Ministry of Finance
Department of Expenditure
New Delhi
18. Shri S.K. Srinivasan
Advocate
35 (Above Hotel Swagath)
1st Main, Gandhinagar
Bangalore - 560 009
19. 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 the copy of ORDER passed by this Tribunal
in the above said Review/Applications on 26-9-88.

Encl : As above


SECTION OFFICER
(JUDICIAL)

Issued
K. M. [Signature]
7-10-88

jc

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE

DATED THIS THE 26TH DAY OF SEPTEMBER, 1988

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

REVIEW APPLICATION NOS. 70 TO 75/1988

AND

APPLICATION NOS. 1510 TO 1515/1988

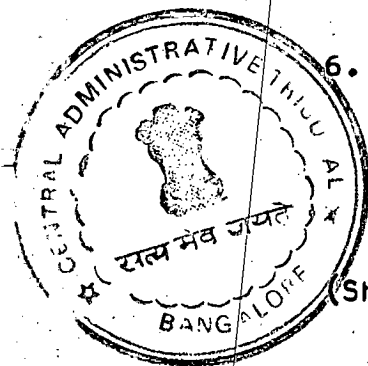
1. Shri M. Vasanthababu,
S/o Mallesharao,
aged 46 years,
Sr. Auditor, ECPA Section,
Accountant Generals Audit-I,
New Building, Bangalore.
2. Shri V.M. Jakati,
S/o N.R. Jakati,
aged 42 years,
Sr. Auditor (A State),
Accountant General Auditor-II,
R.A. Building, Seshadripuram,
Bangalore.
3. Shri K. Vinayaka,
S/o Subbanna,
Sr. Auditor, Accountant General
Audit-I, Vyalikaval Building,
Bangalore.
4. Shri S.N. Ahmed Bakshi,
S/o Mohammed Khan,
Aged 40 years, Sr. Auditor,
Accountant General Audit-I,
Vyalikaval Building,
Bangalore.
5. Shri R. Kantharaj,
S/o C.I. Rajoo Naidu,
aged 40 years, Sr. Auditor,
Accountant General Audit-II,
Accountant Generals Office,
Bangalore.
6. Shri K.R. Ranganathan,
S/o K. Ramaiah,
aged 53 years, Sr. Auditor,
Accountant General Audit-I,
Accountant Generals Office,
Bangalore.

(Shri M. Narayanaswamy, Advocate)

v.

1. Shri M. Nanjundaswamy,
33 years, S/o Shri Marikushaiah,
56, Jayalakshminilaya,
Ramakrishna Layout,
Bangalore.

.... Appli
R.A.
75/
in
to



2. Shri S.L. Ramakrishna,
30 years, S/o S.D.
Laxmipathaiah, No.595,
III Cross V Main
Hanumanthanagar,
Bangalore.
3. Shri M. Basavaraju,
43 years, S/o Shri D.C.
Murgavalappa, No.707,
16th Cross, 25th Main, J.P. Nagar,
Bangalore.
4. Shri V. Ramachandran,
aged 52 years, S/o Shri
G. Venkataramaiah, H-1,
Type III CPWD Quarters,
Vijayanagar, Bangalore.
5. Shri D.V. Bhuvaramamurthy,
32 years, S/o D.R. Venkoba
Rao, 21, 4th Block, Geetha-
Colony, Jayanagar,
Bangalore-11.
6. Shri K. Krishnappa,
28 years, S/o Shri Kariyappa
10/1, 13th Cross, 8th Main,
Malleshwaram, Bangalore.
7. The Accountant General,
(Accounts), Bangalore.
8. The Accountant General
(Audit), Bangalore.
9. The Controller & Auditor
General of India, New Delhi.
10. The Union of India
through its Secretary,
Ministry of Finance
(Dept. of Expenditure),
New Delhi.
(Shri S.K. Srinivasan for
Dr. M.S. Nagaraja, Advocate for
Respondent Nos. 1 to 6)
(Shri M.S. Padmarajaiah, C.G.S.S.C.
for Respondent Nos. 7 to 10)

.... Respondents in
R.A.Nos.70-75/88.

.... Respondent Nos.
9 and 10 are
also Respondent
Nos.1 and 2 in
A.Nos.1510 to
1515/1988

These applications having come up for hearing to-day,
Vice-Chairman made the following:

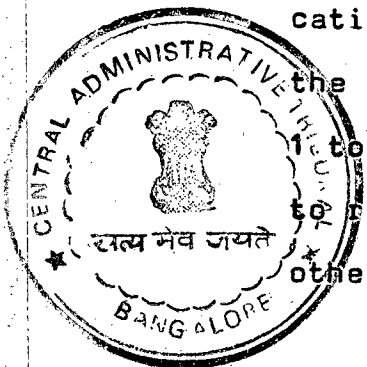
O R D E R

The applicants in these cases are common. The questions
which arise for decision in them are inter-related. We,
therefore, propose to dispose of them by a common order.

2. Prior to 1.3.1984 Audit and Accounts of the finances of the Union and State Governments in the country were performed by an integrated department of Government of India ('GOI'). On the recommendations of the Comptroller and Auditor General of India ('C&AG') who is the Head of that Department, GOI on 19.12.1980 accorded its approval to bifurcate the department into two separate and distinct wings called the 'Audit' and 'Accounts' Wings the details of which are elaborately set out by the C and AG in the 'Manual of Instructions for Restructuring of Cadre in IA & AD' hereinafter referred to as the Scheme. In conformity with the same, the Scheme was implemented from 1.3.1984.

3. In Applications Nos. 1327 to 1332 of 1986 which were transferred applications received from the High Court of Karnataka under Section 29 of the Administrative Tribunals Act, 1985 ('the Act'), respondents 1 to 6 in Review Applications Nos. 70 to 75 of 1988, challenged the 'Scheme' on diverse grounds. When those applications were pending before this Tribunal, on the recommendations of the Fourth Pay Commission, GOI in its order made on 12.6.1987 sanctioned the revision of pay scales to the staff working in the 'Accounts' Wing from 1.4.1987. We disposed of these applications on 7/8.7.1987 (Annexure-F) rejecting the challenge to bifurcation of the Department w.e.f. 1.3.1984. We however upheld the claim of the applicants therein (who are respondents Nos. 1 to 6 in Review Application Nos. 70 to 75/1988) in regard to revision of pay scales w.e.f. 1.1.1986 on parity with all other civil servants of the Union of India.

4. In Review Applications Nos. 70 to 75 of 1988 made under Section 22(3)(f) of the Act, the applicants working in



the Audit Wing and who were not parties to Applications Nos. 1327 to 1332 of 1986, have sought for a review of our order to the extent our order has made a declaration and a direction to allow them the revision of pay scales with effect from 1.1.1986. In Applications Nos. 1510 to 1515 of 1988 made under Section 19 of the Act, these very applicants, had also challenged on diverse grounds the order of GOI made on 12.6.1987.

5. When these cases came up for preliminary hearing on 13.9.1988, we directed notices to the respondents before admission. In pursuance of the same, the respondents have entered appearance through their counsel.

6. We will deal with Review Applications Nos. 70 to 75 of 1988 first.

7. In presenting these applications, there is a delay of 360 days. In I.A.No.1 the applicants have sought for condoning the same on the ground that they came to know our Order on 6.7.1988 and on that, they obtained a certified copy of our Order on 6.7.1988 and then only they had filed them, after availing of reasonable time for examination and filing. The applicants claim that these facts constitute a sufficient cause for condoning the delay in making the applications.

8. Shri M. Narayanaswamy, learned Advocate has appeared for the applicants in all these cases. Shri M.S. Padmarajaiah, learned Senior Central Government Standing Counsel has appeared for GOI and its subordinates in all these cases. Shri S.K. Srinivasan, learned Advocate has appeared for respondents 1 to 6 in Review Applications Nos. 70 to 75 of 1988. We have heard all of them on the I.A. and merits.

9. The applicants, who are seeking a review of our order were not parties to those cases. But, in JOHN LUCAS AND ANOTHER v. THE ADDITIONAL CHIEF MECHANICAL ENGINEER, S.C. RAILWAY AND OTHERS (ATR 1987 (1) CAT 612) a Full Bench of this Tribunal had held that even persons who were not parties to an order, if aggrieved by the same, can seek a review of the same under the Act. On the ratio in 'John Lucas' case, we hold that these applications are maintainable under the Act.

10. Rule 17 of the Rules which regulates limitation for a review reads thus:

17. Review of Application to be filed within thirty days - No application for review shall be entertained unless it is filed within thirty days from the date of the order of which the review is sought.

On the terms of this Rule, these applications made on 1.9.1988 are barred by time. Shri Narayanaswamy without disputing this, urges that every one of the facts and circumstances narrated in I.A. No.1 constitutes a sufficient ground for condoning the delay and condoning the same, these cases be dealt on merits.

11. We have noticed that the applicants were not parties to the transferred applications and therefore we cannot impute them with the knowledge of our order. On the other facts stated by them, which are not controverted by the respondents, there are no reasons to doubt them. If that is so, then what all has been stated by the applicants in I.A. No.1 constitute a sufficient cause to condone the delay. We, therefore, allow I.A. No.1, condone the delay and proceed to deal with the merits.



12. In our order, we have upheld the claim of respondents 1 to 6 for revised pay scales from 1.1.1986 on the very basis of the order of Government, however rejecting their claim for equality in pay scales with the Audit Wing before that date. In reaching our conclusions on both of them, we have not overlooked the true scope and ambit of Articles 14 and 16 of the Constitution of India and the rulings of the Supreme Court explaining them also. We will even assume that another view on the first aspect was possible or the same was even wrong. But, neither of them, will constitute a patent error in our order to justify review under Section 22(3)(f) of the Act read with Order 47 Rule 1 of the Code of Civil Procedure. Even otherwise, we cannot examine our order as if we are a Court of appeal. On any view there is no merit in these review applications and they call for dismissal on merits. With this, we now pass on to deal with Applications Nos. 1510 to 1515 of 1988 in which the applicants have challenged on diverse grounds the order of Government made on 12.6.1987.

13. In making these applications, there is a delay of 82 days. In I.A. No.1 the applicants have sought for condoning that delay on the very facts stated in I.A. No.1 in Review Applications Nos. 70 to 75 of 1988. For the very reasons we have condoned the delay in these cases, we must condone the delay in these cases also. We, therefore, allow I.A. No.1 and condone the delay in making these applications under Section 19 of the Act.

14. The result of our order in R.A. Nos. 70 to 75 of 1988 is that we have really upheld the order of Government

impugned in these cases. On this itself, we cannot uphold the challenge of the applicants to the order of Government made on 12.6.1987. We, therefore, hold that Applications Nos. 1510 to 1515 of 1988 are liable to be dismissed on merits.

15. In the light of our above discussion, we dismiss all these applications. But, in the circumstances of the cases, we direct the parties to bear their own costs.

Sd/-
VICE-CHAIRMAN

TRUE COPY

Sd/-
MEMBER (A) 16.6.1988



Hae
SECTION OFFICER
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE