

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Commercial Complex (BDA)
Indiranagar
Bangalore - 560 038

Dated : 18 JAN 1989

APPLICATION NO. 1883 /88(F)

W.P. NO. _____

Applicant(s)

Shri M. Mohan Raj
To

Respondent(s)

V/s The Regional Provident Fund Commissioner,
Bangalore

1. Shri M. Mohan Raj
C/o Shri Kannappa
No. 343, Banashankari Ist Stage
Sreernivasanagar
Bangalore - 560 050
2. Shri Hari Krishna S. Holla
Advocate
34/3, Ganesh Building, II Floor
5th Main, Gandhinagar
Bangalore - 560 009
3. The Regional Provident Fund Commissioner
Bhavishyanidhi Bhavan
No. 8, Rajaram Mohan Roy Road
Bangalore - 560 025
4. 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(x) on 16-1-89.

Encl : As above

Handwritten signature
DEPUTY REGISTRAR
(JUDICIAL)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE

DATED THIS THE SIXTEENTH DAY OF JANUARY, 1989

Present : Hon'ble Sri P.Srinivasan

Member (A)

APPLICATION No.1883/88

M.Mohan Raj,
C/o kannappa,
No.343, Banashankari 1st Stage,
Srinivasa Nagar,
Bangalore - 50.

...

Applicant

(Sri Hari Krishna S.Holla

...

Advocate)

vs.

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

...

Respondent

(Sri M.Vasudeva Rao

...

Advocate)

This application having come up before the Tribunal
today, Hon'ble Member (A) made the following :

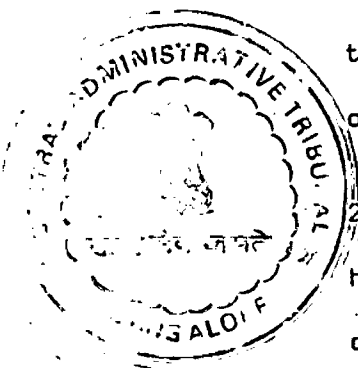
ORDER

This application has been listed for today under cases
not ready for hearing. However, when it was called, both
S/Shri H.S.Holla, learned counsel for the applicant and
M.Vasudeva Rao, learned counsel for the respondents, stated
that it could be heard and disposed of finally. In view
of this, counsel for both sides have been duly heard.

2. This application is delayed by 51 days. The applicant
has made an interlocutory application (IA) for condonation
of delay. Shri Holla submits that reasonable cause has been
shown for the delay in the IA which should, therefore, be
condoned. Shri Rao opposes the request for condonation.

P. Srinivasan

....2/-



3. After careful consideration I feel that the delay in filing the application in this case deserves to be condoned. Moreover the applicant's grievance relating to the quantum of subsistence allowance payable to him is a continuing one as he is still under suspension. I, therefore, condone the delay and proceed to deal with the application on merits below.

4. The applicant who was working as an Upper Division Clerk in the office of the Regional Provident Fund Commissioner(RPFC), Bangalore, was placed under suspension with effect from 30.4.1981 in view of a criminal case registered against him. He was paid subsistence allowances initially at the rate of 50% of the salary and allowances being drawn by him immediately before his suspension which was raised to 75% after the expiry of six months. The pay of all Central Government servants was revised with effect from 1.1.1986 as a result of the recommendations of the 4th Pay Commission. However, the applicant continued to be paid subsistence allowances at 75% of the pay and allowances drawn by him prior to 1.1.1986. His prayer in this application is that with effect from 1.1.1986, the subsistence allowance should be revised with reference to the pay and allowances that he would have drawn had he been in ^M service during the period.

5. Shri Holla submitted that applications raising similar prayers had been allowed by this Bench of the Tribunal ^M and that the facts of the present case are on all fours with those in cases already decided. Shri M.Vasudeva Rao resisted the claim of the applicant and submitted that the applicant was not entitled to the relief that has been sought for in this application.

6. I am of the view that the applicant is entitled to the relief claimed in this application. The facts of this case are on all fours with those in HA Krishnamurthy vs RPF Commissioner, Bangalore, Application No.1008 of 1988 decided on 17.8.88, by a Bench of this Tribunal consisting of Justice Puttaswamy and myself. Following the decision in that case, I direct the respondents to calculate and pay subsistence allowance to the applicant on and after 1.1.1986 with reference to the pay and allowances that he would have drawn in pursuance of the recommendations of the 4th Pay Commission, had he been in service. For this purpose, the pay in the revised scale (applicable on and after 1.1.1986) corresponding to the pay drawn by him in the old scale immediately before his suspension should be taken into account.

7. The application is disposed of on the above terms leaving the parties to bear their own costs.

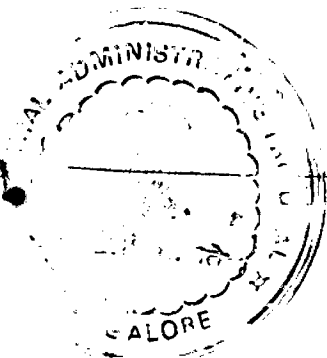
TRUE COPY

sd/-

MEMBER (A)

16/7/81

an.


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

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Commercial Complex(BDA)
Indiranagar
Bangalore - 560 038

Dated : **11 APR 1989**

REVIEW APPLICATION NO (X) 18 /89
IN APPLICATION NO. 1883/88(F)
W.P. NO (S) _____

Applicant (X)

The Regional Provident Fund
Commissioner, Bangalore

Respondent (X)

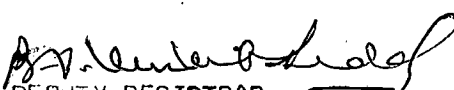
V/s Shri M. Mohan Raj

To

1. The Regional Provident Fund Commissioner
'Bhavishya Nidhi Bhavan'
No. 8, Rajaram Mohan Roy Road
Bangalore - 560 025
2. 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 a copy of ORDER ~~XXXX~~ ~~INTERIM ORDER~~
^{Review}
passed by this Tribunal in the above said application(X) on 5-4-89.


DEPUTY REGISTRAR
(JUDICIAL)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BANGALORE

DATED THIS THE FIFTH DAY OF APRIL 1989.

Present: Hon'ble Shri P.SRINIVASAN .. MEMBER(A)

REVIEW APPLICATION NO.18/89
(A.No.1883/88)

Reg. Rev. Fund Commissioner,
8 Raja Ram mohan Roy Road,
Bangalore 25.

.. Review Applicant

vs.

(Shri M.Vasudeva Rao .. Advocate)

M.Mohan Raj,
c/o Mr.Kannappa,
343 Banashankari I Stage,
Srinivasanagar,
Bangalore 50.

.. Review Respondent.

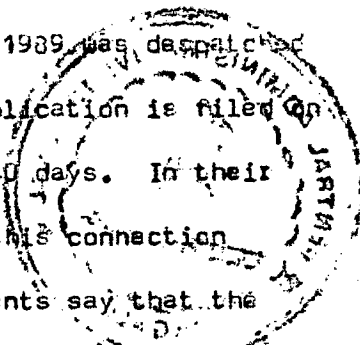
This application has come up today before this
Tribunal for Orders. Hon'ble Member(A) made the following:

O R D E R

By this application, the respondents in application
No.1883/88 (hereafter referred to as " the respondents") seek
a review of order dated 16.1.1989 by which that application
was disposed of.

2. Shri M.Vasudeva Rao, learned Additional Central
Government Standing Counsel for the respondents has been
in the matter.

3. I find the order passed on 16.1.1989 was despatched
to the respondents on 18.1.1989. This application is filed on
31.3.1989. It is thus delayed by nearly 40 days. In their
inter locutory application (IA) filed in this connection
seeking condonation of delay, the respondents say that the
delay is of 36 days. The reason for the delay is said to be
due to the time taken by Respondent No. 3 having to seek
instructions from his superiors before he could file this

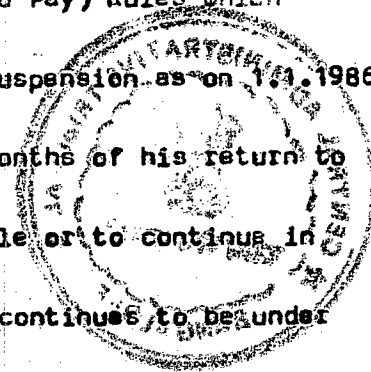


P. Srinivasan

application. I am unable to accept this as a justifiable reason as the respondents knew well that an application for review had to be filed within 30 days - which is itself a reasonable period - and that administrative procedures, if any, have to be completed within that period. For this reason itself this application deserves to be rejected.

4. However, I have also considered the matter on merits. In the order dated 16.1.1989 disposing of the original application, the respondents were directed to revise the subsistence allowance payable to the applicant with effect from 1.1.1986 with reference to the revised ^Y pay to which he would have been eligible from that date on the implementation of the ^Y recommendations of the Fourth Pay Commission. The respondents urge in the present application that that Order is not in conformity with Rule 6 of the Central Civil Services (Revised Pay) Rules 1986. It may be mentioned here that even in their reply to the original application, the respondents draw attention to Rule 6 of the CCS (Revised Pay) Rules which laid down that a Government servant under suspension as on 1.1.1986 will have to exercise his option within 3 months of his return to duty either to come over to the new pay scale or to continue in his old scale of pay. Since the applicant continues to be under suspension even till now, he has not had the opportunity to exercise this option and till he does so he cannot ask for revision of subsistence allowance with reference to the revised pay scale. This contention stood automatically rejected

D S Ue



by the order dated 16.1.1989 allowing the claim of the applicant for revision of subsistence allowance following a detailed judgement to the same effect in H.A.KRISHNA MURTHY VS. REGIONAL PROVIDENT COMMISSIONER? Application No.1008/88 rendered on 17.8.1988. Therefore, if the respondents are aggrieved with the Order dated 16.1.1989 disposing of the original application, the remedy open to them is to appeal against that order. This is not a matter for review as there is no mistake apparent from the record.



5. In the result, the application is rejected at the stage of admission itself.

Sd/-

MEMBER(A)

5/4/89

TRUE COPY

bk.

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



TRUE COPY

REPLY DATED 10/11/2018
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Commercial Complex (BDA)
Indiranagar
Bangalore - 560 038

Dated :

31 AUG 1989

CONTEMPT
PETITION
(CIVIL)

APPLICATION NO (X) 65 / 89

IN APPLICATION NO. 1883/88(F)

W.P. NO (D) _____

Applicant (x)

Respondents

Shri M. Mehanraj

V/s

The Regional Provident Fund Commissioner,
Bangalore

To

1. Shri M. Mehanraj
C/o Shri Kannappa
No. 343, Banashankari I Stage
Sreenivasanagar
Bangalore - 560 050
2. Shri Hari Krishna S. Hella
Advocate
34/3, Ganesh Building, II Floor
5th 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~~

C.P. (Civil)

passed by this Tribunal in the above said application (x) on 29-8-89.

DEPUTY REGISTRAR
(JUDICIAL)

Encl : As above

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BANGALORE

DATED THIS THE TWENTYNINTH DAY OF AUGUST 1989.

Present: Hon'ble Shri Justice K.S. Puttaswamy .. VICE CHAIRMAN

Hon'ble Shri P. Srinivasan .. MEMBER(A)

Contempt Petition No.65/89
(in A.NO.1883/88)

M. Mohanraj,
No.343, Banashankari I stage,
Srinivasa Nagar,
Bangalore 560 050.

.. Applicant.

(Sh. Hari Krishna S. Holla .. Advocate)

vs.

The Regional Provident
Fund Commissioner,
No.8, Rajaram Mohan Roy Road,
Bangalore 560 025.

.. Respondent.

This application has come up today before this
Tribunal for Orders. Hon'ble Member(A) made the following:

O R D E R

This Contempt of Court Petition has come before
us today for admission.

2. Shri H.S. Holla, learned counsel for the applicant,
submits that the alleged contempt no longer survives as the
respondents have since complied with the order passed by this
Tribunal on 16.1.1989 disposing of Application No.1883 of 1989.

3. In view of this, the Contempt of Court petition
does not survive for consideration. The proceedings for
contempt are therefore hereby dropped.



TRUE COPY

[Signature]
REGISTRAR (JULY 31/89) VICE CHAIRMAN
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE
bk.

[Signature]
MEMBER(A)

29/8

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

FORM OF INDEX AS PER CAT (DESTRUCTION OF RECORDS) RULES 1990

LIST OF PAPERS IN OA/TA/RA/CP NO 1566/88 /

Sl.No.	Items	Description of papers
1.	Order Sheets	Kept
2.	All order/judgements of the Tribunal passed in the case	do -
3.	Judgements and order received from the Supreme Court in the case	-
4.	All applications including MAs/ Plaints/Memoranda/appeals together with annexures and all other documents whether original or copies filed with them.	Kept
5.	Counter/written statement and reply affidavits	do -
6.	All depositions of witnesses taken by way of affidavit	-
7.	All documents or certified copies received by the Court and marked as exhibits, reports and examination of commissioners	-
8.	Notices	-
9.	Letters filed by the counsel and other correspondences, vakalatnama/memo or appearance	Kept
10.	All other papers not already specified.	do -

pvk

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



ORDER SHEET

Application No. 1566 of 1988(F)

Applicant

H. Anandarama Udaya

Advocate for Applicant

Party in person

Respondent

Secretary, M/O Finance, D/o
Govt. of Delhi & ant.

Advocate for Respondent

Date	Office Notes	Orders of Tribunal
28/9/88	<p>An appln. no 2919 of the Act has been filed. It prays for :-</p> <p>Strike down para no-3 of Para B, which gives effect to the benefit of Special Pay for fixation & promotion only from 1-9-85 as arbitrary & discriminatory.</p> <p>Declare that the applicant is entitled to the benefit of Spl. Pay of Rs. 35/- in fixation on his promotion to LSG from 1-8-85.</p> <p>Interim relief - Nil</p> <p>As directed by the Dy-Registrar, the appln. is registered & is being placed before Bench on 29-9-88 for perusal by Bench.</p> <p>IOU is removed.</p>	<p>PS(A) 29.9.88</p> <p>Applicant in person. Heard.</p> <p>The issues raised in the application deserve to be examined.</p> <p>Admit.</p> <p>Issue noticed to the respondents calling upon them to file their reply to the application within one month from the date of receipt of the notice. Call on 25.10.88 in cases not ready for hearing.</p> <p align="right">29/9/88 PS(A)</p>

28/9

Nobis issued to Respondents
1/2 on 20/9/88 with hearing
date on 25/10/88

30/9

Date	Office Notes	Orders of Tribunal
11-10-88	<p>Both R-1 and 2 are served.</p> <p>Shri M.S. Padmarajaiah files Memo of appearance for respondents - 25/10/88</p> <p>25-10-88</p> <p>12-12-88</p> <p>3-1-89</p>	<p>KSP/LHAR: 25.10.88</p> <p>Applicant in person.</p> <p>Respondents by Shri M.S. Padmarajaiah.</p> <p>Shri Padmarajaiah prays for 8 weeks' time to file reply of the respondents.</p> <p>Prayer granted.</p> <p>Call on 12-12-1988.</p> <p>PS</p> <p>The applicant present in person.</p> <p>Shri M.S. Padmarajaiah for the respondents prays for 15 days' time to file their reply to the application.</p> <p>Time asked for allowed.</p> <p>Call on 3-1-1989 in cases not ready for hearing.</p> <p>12/12 MEMBER(A)</p>

-3-
In the Central Administrative
Tribunal Bangalore Bench,
Bangalore

A.No. 1566/88 (F)

Order Sheet (contd)

Date	Office Notes	Orders of Tribunal
	<p style="text-align: center;"><u>3-1-89</u></p> <p>Reply Statement of depr filed</p> <p style="text-align: right;">Boo R CO CHr</p>	<p style="text-align: center;"><u>KSPMC/PSM(A)</u> <u>3.1.1989</u></p> <p>Applicant in person. Respondents by Shri M.S. Padmarajiah Reply of the respondents filed. Copy furnished to the applicant. Post for hearing on 16.1.1989.</p> <p style="text-align: center;">VC</p> <p style="text-align: right;">M(A) 3/1/89</p>
	<p style="text-align: center;"><u>16-1-89</u></p> <p>Hon'ble Sh. P. S. (A.H.)</p> <p>Sh. H. Anandarama Udiga, applicant appeared in Person. Sh. M.S. Padmarajiah Ss. C.A.S.C. for the deposed. Present. Parties on both sides heard. Order dictated in the Court. The appeal is allowed.</p> <p style="text-align: right;">B 16/1/89</p>	
18-1-89	<p>Order dated 16-1-89 issued to all the parties concerned & of C added to the file</p> <p>K. W. G. N.</p>	

Date

Office Notes

Orders of Tribunal

24-1-89

As directed by Hon.
Member, this case is
brought to day - for ordering
correction of a
typographical error ~~which~~
in the final order
dte 16-1-89

24/1

PS/24.1.89

ORDER

In my order dated 16-1-89,
disposing of application No.1566/88,
in para³⁵ typographical error has
crept in. Earlier in the paragraph,
it is stated that "on his regular
promotion from 2-9-85, he was surely
entitled to the benefit of Government
of India letter dated 1-9-87 which
was specifically made effective from
1-9-85". However, at the end of the
paragraph, the respondents were directed
to give the applicant the benefit of
the said letter from 2-8-85 instead of
from 2-9-85 which is a typographical
error. Therefore, in the last line of
paragraph 3 of page 2 of the order,
the date "2.8.85" is corrected to
"2.9.85".

Registrar may please have
this correction carried out in the
original order.

P. Srinivasan
(P. SRINIVASAN) 24/1/89
MEMBER(A)

31-1-89

Corrected copy
of the order dated
16-1-89 issued to all the
parties concerned & of c
added to the file.

K. N. G. N.

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

EXAMINER'S REPORT IN THE APPLICATION

Presented by Shri the party in person Advocate

Application No. _____ 88/(F)

H. Anandarama Udaya Applicant(s)

VERSUS

Secretary, H/o Finance, D/o Export, N.D. & anr. Respondent/s

Subject: Fixation of pay

1. Date of presentation/No. of sets filed: 28.9.88/4 sets

2. Is the presentation as
Sec.19 of the Admin.
Tribunals Act, 1985
(13 of 1985)

Yes

3. Is the application in
prescribed form? (As per
Central Admn. Tribunal
(Procedure) Rules, 1987)

Yes

4. Is the appeal in time

Yes

5. Has the vakalatnama been
filed?

Yes

6. Is the application accom-
panied by BD/Postal Order
for Rs.50/-

Yes

7. Has the certified copy/
copies of the order/s
against which the appli-
cation is made, filed.

Yes

8. Is the matter raised in the
application pending before
any Court of Law or any
other Bench of the Tribunal?

No

9. Has the applicant exhausted all channels of remedies available to him before presenting the application in this Tribunal.

Yes

10. Is the applicant resident/posted within the territorial jurisdiction of Karnataka?

Noted from source

Yes at Bangalore

11. (a) Whether the relief sought is specific?

Yes

(b) Whether any interim relief is prayed for?

No

(c) Whether specific reason/s for seeking interim relief is/are furnished?

No.

12. Any other defect not covered by items 1 to 10 above?

No.

13. (a) The application is defective, it is required to be returned to attend to defects as at Sl. Nos.

✓ (b) The application is in order it may be registered.

Noted 29-9-88

DEPUTY REGISTRAR.

Registrar.

Registered

Noted for presentation on 29-9-88 before Chair

PL
23/9

Presented by Sri. H. Anandarama Udupa
Party in person on 28-9-88

for presentation on 29-9-88

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
BANGALORE BENCH, BANGALORE - 560 038.

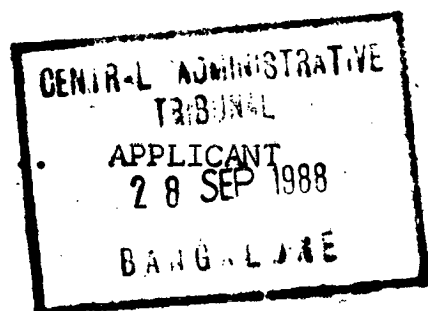
Application No. 1566 of 1988 (P)^{28/9}

Between :

H. ANANDARAMA UDUPA

And :

The Government of India
By its Secretary,
Ministry of Finance
and another.



.. RESPONDENTS

Date of Filing :

28-9-88

By :

Party in person

Registration No. :

[Signature]
Signature of Registrar
28/9

Dy. No. 533/88 J-2
dt 28-9-88

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BANGALORE - 560 038

Application No. 1566 of 1988 (F)

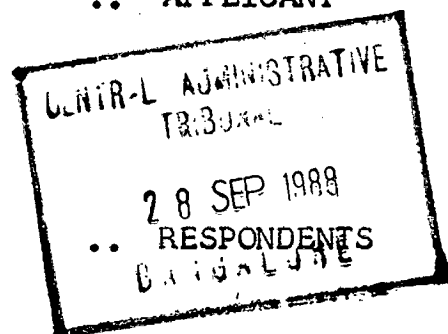
Between :

H. ANANDARAMA UDUPA

.. APPLICANT

And :

The Government of India
By its Secretary,
Ministry of Finance
and another.

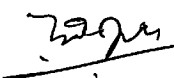


I N D E X

Sl. No.	Particulars	Page
1.	Application under Section 19 of AT Act, 1985	1 To 5
2.	Promotion Order dated (Annexure - A)	6
3.	Copy of OM No. 7 (35)-E III/87 dated 1.9.1987 Communicated in Post Master General's letter No. EST/20-60/Rigs/II dated 28-10-1987. (Annexure - B)	7

Place : Bangalore.

Date : 28-9-1988.


SIGNATURE OF APPLICANT

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,
BANGALORE BENCH, BANGALORE - 560 038.

Application No. 1566 of 1988 (F)

Between :
H.A. UDUPA AND G.O.I. M/O FINANCE
and another.

Application Under Section 19 of the Administrative
Tribunals Act, 1985 :

1. Particulars of the Applicant :

H. ANANDARAMA UDUPA,
S/o. H. Krishna Udupa,
(Age 59 Years),
No. 76, Postal Colony, I Stage,
Sanjay Nagar,
Bangalore - 560 024.

2. Particulars of the Respondents :

1. The Government of India,
Represented by its Secretary,
Ministry of Finance,
Department of Expenditure,
New Delhi - 110 001.
2. The Post Master General,
Karnataka Circle,
Bangalore - 560 001

3.1 Particulars of Orders against which the Application
is made :

- a. O.M. No. 7 (35) - E III/87, dated
1st September 1987 from the Ministry of
Finance (Annexure 'B') communicated in
PMG BG - No. EST/20-60/Rdgs/II dated 28-10-1987.
- b. Denial of benefit of Special Pay for the
purpose of Fixation of Pay on promotion
in pursuance of the Orders mentioned at (a)
above (No written communication).

3.2 Subject in Brief :

The applicant has been denied benefit of special pay
for the purpose of fixation of his pay on promotion from
U.D.C. to L.S.G. Date of effect of the orders referred

to in Annexure 'B' has been arbitrarily fixed as 1-9-1985.

4. Jurisdiction of the Tribunal :

The applicant declares that the subject matter of the orders against which this application is made, is within the jurisdiction of the Tribunal.

5. Limitation :

The applicant further declares that the application is within the limitation prescribed in Section 21 of the Administrative Tribunals Act, 1985.

6. Facts of the Case :

The applicant joined the Department of Posts in the year 1952. He got promoted as U.D.C. on 1-4-1965. By virtue of his seniority and length of service in U.D.C. he has been granted a special pay of Rs. 35/- with effect from 1-8-1981.

6.1 The applicant got further promotion to Lower Selection Grade (L.S.G.) with effect from 2-9-1985. The applicant produces a copy of the said promotion order marked as Annexure 'A'. The applicant retired from service from the post of L.S.G. Clerk, Office of the P.M.G., Bangalore, on 31-8-1987.

6.2 The first respondent (Ministry of Finance) by its O.M. No. 7(35) E III/87 dated 1st September 1987 communicated in PMG BG Letter No. EST/20-60/Rtgs/II dated 28-10-1987, ordered that the special pay of Rs. 35/- granted to U.D.C.'s shall be taken into account in fixation of pay on promotion subject to the condition

that the incumbent is a substantive holder of the post to which special pay is attached OR the incumbent, on the date of promotion is officiating in lower post for a period of not less than 3 years.

6.3 The applicant has satisfied both the conditions. He has been working in the Grade of U.D.C. since 1965 and was confirmed in the said post in 1968. He has been ~~work~~ drawing Special Pay in U.D.C. from 1-8-1981.

6.4 The first respondent has ordered that the orders giving benefit of special pay for fixation purpose would take effect from 1st September 1985 only. This cut off date has been fixed arbitrarily, denying the benefit for those who are promoted earlier to 1-9-1985.

The order is therefore discriminatory.

6.5 The Second Respondent (P.M.G.) has denied the benefit of Special Pay for fixation in L.S.G. to the Applicant on the sole ground that though he was promoted with effect from 2-9-1985, he has been officiating in L.S.G. in a local arrangement from 1-8-1985. This decision has adversely affected the fixation of pay and consequential retirement benefits to the applicant. The cut-off date viz., 1-9-1985 presented by R.I. has thus adversely affected.

6.6 While some of the juniors to the applicant have been recently granted this benefit by virtue of their promotion to L.S.G. after 1-9-1985 and got arrears also, the applicant has been denied the benefit for the technical reason that he happened to officiate in L.S.G. in a local arrangement from 1-8-1985 and for the arbitrary order of date of effect prescribed by R-I.

7. Details of Remedies Exhausted :

The applicant declares that he has availed of all the remedies available to him under the relevant rules. There are no statutory remedies available against the impugned orders.

8. Matters not previously filed or pending with any other Court :

The applicant further declares that he had not previously filed any application, writ petition or suit regarding the matter in respect of which this application has been made, before any Court of Law or any other authority or any other Bench of the Tribunal nor any such application, writ petition or suit is pending before any of them.

Relief Sought

9. In view of the facts mentioned in para 6 above, the applicant prays this Honourable Tribunal for the following reliefs:

- a. To strike down para No. 3 of order at Annexure 'B' which gives effect to the benefit of special pay for fixation of promotion only from 1-9-1985 as arbitrary and discriminatory.
- b. To declare that the applicant is entitled to the benefit of special pay of Rs.35/- in fixation on his promotion to L.S.G. from 1-8-1985.

Alternatively

- a. The applicant prays for an order to extend the benefit of special pay of Rs.35/- in fixation on his regular promotion to L.S.G. with effect from 2-9-1985.

b. To grant any other relief or reliefs deemed fit by this Honourable Tribunal in the interest of justice and equity.

10. Interim Relief Sought : NIL.

11. Particulars of Postal Order in respect of Application Fee :

I.P.O. No. : DD 5 / 915635
for Rs.50/-

Name of Issuing Post Office : Rajmahal Vilas Extn. II Stage P.O.

Date : September 27, 1988.

12. List of Enclosures :

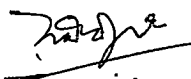
- i. Copies of documents as in Index.
- ii. I.P.O. for Rs.50/- as in paragraph 11 above.
- iii. Two blank envelopes with address of Respondents.

VERIFICATION

I, H. ANANDARAMA UDUPA, Son of Sri. H. Krishna Udupa, Retired L.S.G. Clerk, Office of P.M.G. Karnataka Circle, resident of Bangalore, do hereby verify that the contents of paras 1 to 12 are true to my personal knowledge and that I have not suppressed any material fact.

Place : BANGALORE.

Date : 28-9-'88.


SIGNATURE OF APPLICANT

ANNEXURE - A

6

DEPARTMENT OF POSTS
OFFICE OF THE POSTMASTER GENERAL, KARNATAKA CIRCLE, BANGALORE

Memo No. STA/2-3/1/II --- Dated at Bangalore the 12/9/85---

Consequent on retirement of Sri H. Ramanathan, Section Supervisor w.e.f. 2.9.85 (F/N), Shri H. Anandarama Udupa, UDC Spl. pay is appointed to officiate as LSG Operative on adhoc basis w.e.f. 2.9.85 (F/N).

The appointment of Sri H. Anandarama Udupa as LSG Operative on adhoc basis without will not bestow on the official any claim for regular appointment or continuance to officiate in the cadre of LSG. The service rendered on adhoc basis will also not count for the purpose of seniority or eligibility for promotion to the next higher cadre. This adhoc appointment will be terminated as and when approved official becomes available for appointment as LSG.

A copy of this memo is issued to :

1. Sri H.A. Udupa, UDC C.O. BG-1. -
2. P.P. of the official.
3. A&P Section C.O.
4. ESA Section, C.O.
5. File no. STA/2-3/884
6. Spare.


(M.P. RAJAN)
Director of Postal Services (HQ)
O/o P.M.O., Bangalore-560 001.

/jpv/12985/

ANNEXURE - B

7

DEPARTMENT OF POSTS

OFFICE OF THE POSTMASTER-GENERAL, KARNATAKA CIRCLE
BANGALORE-560 001

To

The Director of Postal Services,
N.K. Region, Dharwad-580 001.

All Sections of C.O.

No. EST/20-60/Rlgs/II dated at Bangalore, the 28-10-87

Sub: Grant of special Pay of Rs.35/-
per month to the UDCs in the
Non Secretariat Administrative
offices - Question whether this
amount should be taken into account
in the fixation of Pay on Promotion-
Decision regarding.

A copy of letter No.6-9/87-PAP dtd.
5-10-1987 from D.G. (Posts), New Delhi is forwarded for your
information and guidance.

Di: one

(K. ADISASHAN)

Asst. Postmaster-General (EST)
for Postmaster-General
Karnataka Circle
Bangalore-560001

NC*

Copy of the letter as referred to above:

Subject: Grant of Special Pay of Rs.35/-
per month to the Upper Division
Clerks in the non-Secretariat
administrative offices- question
whether this amount should be
taken into account in the fixation
of pay on promotion - Decision
regarding.

Sir,

I am directed to forward herewith a copy of
Ministry of Finance (Deptt. of Expenditure) New Delhi, O.M.
No.7(35)-EIII/87 dated 1st Sept. 1987 on the above subject for
your information, guidance and necessary action. That
Ministry's O.M. No.7(52)-EIII/78 dated 5-5-79 was circulated
vide this office letter No.6-8/79-PAP dtd. 17th May 1979.

Yours faithfully,

sd/-

(Y.D. MEHTA)
Section Officer (PAP)

contd.....P/2

No.7(35)-E III/87
Government of India
Ministry of Finance
Department of Expenditure

New Delhi, the 1st Sept 1987.

OFFICE MEMORANDUM

Sub: Grant of Special Pay of Rs.35/- per month to the Upper Division Clerks in the Non-Secretariat administrative offices-question whether this amount should be taken into account in the fixation of pay on promotion-Decision regarding.

The undersigned is directed to refer to this Ministry's O.M. No.7(52)/E-III/78, dated 5th May, 1979 on the subject mentioned above which provides for grant of special pay at the rate of Rs.35/- per month to Upper Division Clerks in the non-Secretariat administrative offices for attending to work of a more complex and important nature. The O.M. further stipulates that the total number of such posts should be limited to 10% of the posts in the respective cadre and that these posts should be identified as carrying discernible duties and responsibilities of a complex nature higher than those normally expected of Upper Division Clerks.

(2) The staff side in the National Council of the J.C.M. made a demand that Rs.35/- per month paid to the Upper Division Clerks as special pay in terms of the O.M. dated 5th May, 1979 referred to above, should be taken into account in fixation of pay on promotion. The matter was referred to the Board of Arbitration which gave its award on 28th April, 1987. Accordingly, pursuant to the award of the Board of Arbitration, the President is pleased to decide as under:-

Rs.35/- per month paid to UDCs as special pay under Ministry of Finance (Department of Expenditure) Office Memorandum No.7(52)/E-III/78 dtd. 5-5-1979 shall be taken into account for fixation of pay on promotion subject to the conditions:-

- (a) that the incumbent is a substantive holder of the post to which the special pay is attached; OR
- (b) that the incumbent, on the date of his appointment to higher post, is officiating in the lower post to which the special pay is attached, continuously for a period of not less than three years.

(3) These orders take effect from 1st September 1985.

sd/-

(M. S. MATHUR)
Director

7.

Filed in Court
CD
3/11

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL, BANGALORE
BENCH, BANGALORE

Application No.1566 of 1988(F)

Betw en:

H. Anandarama Udupa

.. Applicant.

And:

U.O.I and another

.. Respondents.

..

I N D E X

Sl.
no

Particulars

Pages

1. Reply of respondents under Rule

12 of the Central Administrative

Tribunal (Procedure) Rules

1- 6

Bangalore.

Dated: 16/12/1988

M. Madhavaiah
Sr. Central Govt. Standing Counsel
and Advocate for Respondents.

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL, BANGALORE
BENBH, BANGALORE

Application No.1566 of 1988(F)

Between:

H. Anandarama Udupa .. Applicant.

And:

U.O.I and another --- Respondents.

...

REPLY STATEMENT OF
RESPONDENTS

Under Rule 12 of the Central Administrative Tribunal(Procedure) Rules, 1986, the Respondents submit as follows:-

1. The applicant in the above application has prayed this Hon'ble Tribunal to strike down para 3 of the order at Annexure B to the application which gives effect to the benefit of special pay for fixation of promotion only from 1.9.1985 and to declare that he is entitled to the benefit of special pay of Rs 35/- in fixation on his promotion to L.S.G from 1.8.1985. and alternately he has prayed for an order to extend the benefit of special pay of Rs 35/- in fixation on his regular promotion to L.S.G with effect from 2.9.1985. and for other consequential reliefs.
2. It is respectfully submitted that the applicant is not entitled for any of the reliefs for the following

reasons and facts:-

3. It is submitted that the Applicant was an upper Division Clerk in the office of the second respondent- Post Master General in Karnataka. He was granted special pay of Rs.35/- w.e.f. 1.8.1981. He was officiating in higher grade i.e., L.SG w.e.f. 1.8.85 while so officiating he was promoted on adhoc basis against a regular vacancy in LSG w.e.f. 2.9.85. Thus, he continued in LSG grade w.e.f. 1.8.85 on which day his pay in LSG was fixed under relevant rules, i.e., taking special pay into account in terms of O.M. No.7(52)/E-III/78 dated 5.5.79 of M.O.F. By an order dated 1.9.87 under No.7(35)-E-III/87 M.O.F in terms of Arbitration award decided to count this special pay for the purpose of fixation of pay on promotion subject to the condition that the incumbent is a substantive holder of the post to which special pay is attached or that the incumbent on the date of his appointment to higher post, is officiating in the lower post to which the special pay is attached, continuously for a period of not less than three years. This order took effect from 1.9.1985.

4. It is submitted that since the applicant was officiating from 1.8.85 on which day his pay has been fixed in LSG

in which cadre he continued. Opinion of I.F.A was sought on the applicability of the orders dated 1.9.87. IFA opined that the benefit of M.O.F.O.M. dated 1.9.87 is applicable only in cases of promotion on or after 1.9.85. As the official was officiating in a leave vacancy on adhoc basis from 1.8.85 till his promotion on adhoc basis in a regular vacancy, the benefits of the O.M. referred to cannot be extended in the case of the applicant and there is no occasion for fixation of his pay on 2.9.85.

5. The crucial date 1.9.85 has emerged by the award of Board of arbitration. The Government accepted the award in toto and has not gone for any amendment. In case the pay of the seniors promoted before 1.9.85 is stepped up with reference to the pay of their juniors promoted after 1.9.85, it would amount to amendment of award. Once the Govt., has decided to accept the award in toto and not suggested any amendment whatsoever, it cannot be implemented in different fashions as it may create problems in other awards treating this as a precedent. In view of this, the prayer of the applicant cannot be accepted and the same is liable to be rejected.

6. Without prejudice to what is stated above, the Respondents submit that the applicant is not entitled for any of the reliefs for the following reasons and facts while traversing the application paraswise:-

7. Regarding paras 3.1(a) and (b) of the application;-

The decision of the President of India in O.M. dated 1.9.87 is pursuant to the award of Board of Arbitration. The applicant's pay in the grade of LSG is fixed on 1.8.85 from which date he continued in that cadre and as such there is no second occasion to re-fix his pay in LSG after 1.8.85.

8. Regarding para 32 and 4 of the application;-

The date of effect of the order assailed is 1.9.85 and the Presidential order is pursuant to the award of board of arbitration. In view of the fact that the decision is pursuant to the award of the board of arbitration, interference by this Hon'ble Tribunal is not justified.

9. Regarding para 6 of the application;-
-x- -----

The applicant has been granted special pay of Rs.35/- w.e.f. 1.8.81 which is not treated as part of pay for fixation of pay on promotion to higher post in terms of G.I.M.F letter No.F9(1)-E-III/80 dated 18.6.80 under FR-9(25) incorporated as G.O.I orders No.10 in Swamy's

Compliation of FR SR Part-I.

10. Regarding para 6.1 of the application;-

The applicant whose pay in LSG was fixed on 1.8.85 in which post he was officiating in leave vacancy, continued in that grade till retirement. Hence there was no occasion to refix his pay on 1.9.85.

11. Regarding para 6.2 and 6.3 of the application;-

The date from which the order was to be effective was 1.9.1985. The pay of the applicant in the higher grade is since fixed on 1.8.85, he is not eligible for refixation on 1.9.1985 in terms of the orders dated 1.9.1987.

12. Regarding para 6.4 of the application;-

The crucial date has emerged as the award of the board of arbitration which is accepted in toto. As stated in brief facts above cut of date cannot be amended. It would amount to the amendment of the award which will create many problems in other awards treating this as a precedent. There is no merit in the application and the same is liable to be rejected.

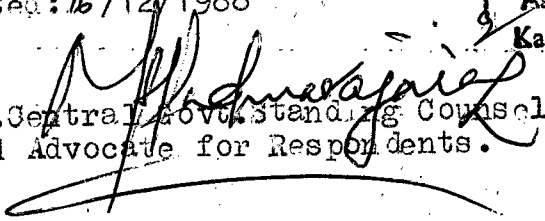
13. All other averments in the application which


are not specifically traversed, admitted or denied hereinbefore, are hereby denied.

Wherefore, it is prayed that this Hon'ble Tribunal be pleased to reject the application, in the interests of justice and equity.

Bangalore.

Dated: 16/12/1988


Sr. Central Govt. Standing Counsel
and Advocate for Respondents.


for Respondents.

Asst. Postmaster General (STAFF)

Karnataka Circle, Bangalore-560001

Verification
- - - - -

I, N.D. Bhakta, Asst. Post Master General, (STA), Office of the Post Master General, Karnataka Circle, Bangalore, do hereby verify that what is stated above in the reply statement is true to the best of my knowledge, information and I believe them to be true.

Bangalore.

Dated: 16/12/1988


for Respondents.

Asst. Postmaster General (STAFF)

Karnataka Circle, Bangalore-560001

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE

DATED THIS THE SIXTEENTH DAY OF JANUARY, 1989

Present : Hon'ble Sri P.Srinivasan

Member (A)

APPLICATION No.1566/88.

H.Anandarama Udupa,
No.76, Postal Colony, I Stage,
Sanjay Nagar,
Bangalore-24.

Applicant

vs.

1. The Government of India,
Represented by its Secretary,
Ministry of Finance,
Deptt. of Expenditure,
New Delhi -1.

2. The Post Master General,
Karnataka Circle,
Bangalore - 1.

Respondents

(Sri M.S.Padmarajaiah ... Advocate)

This application having come up before the Tribunal
today, Hon'ble Member (A) made the following :

ORDER

The applicant who has retired from service on 31.8.87
complains in this application that on his promotion from the
post of Upper Division Clerk (UDC) to the Lower Selection
Grade (LSG) with effect from 2.9.85, his initial pay in LSG
was fixed without taking into account the special pay of
Rs.35/- which he was drawing as UDC before his promotion.

2. The applicant who presented his case himself submitted
that the Government of India, Ministry of Finance, had in
their letter dated 1.9.87 decided that special pay of Rs.35/-

P. Srinivasan

...2/-

per month granted to UDCs in non-Secretariat Administrative Offices for attending to work of more complex and important nature should be taken into account for fixing pay on their promotion to the next higher post provided that the official concerned had held the post in which special pay was being paid in a substantive capacity or in the alternative he had held the post in which special pay was being paid to him, continuously for a period of three years or more. The applicant fulfilled both these alternative conditions when he was promoted to LSG. He had been denied the benefit of the letter of the Government of India dated 1.9.1987.

2. Shri M.S. Padmarajaiah, learned counsel for the respondents, resisted the claim of the applicant. The applicant was actually promoted to LSG on 1.8.85 in a leave vacancy and was regularly promoted to that grade from 2.9.1985. Since his pay was first fixed on 1.8.85 the authorities did not re-fix his pay again on 2.9.85.

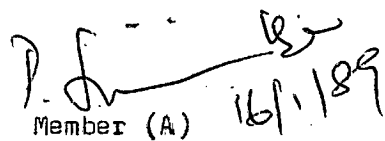
3. After hearing both sides I am of the view that the applicant is entitled to the benefit he seeks. As admitted by the respondents the promotion of the applicant on 1.8.85 was only in a leave vacancy. He was given regular promotion from 2.9.85. On his regular promotion from 2.9.85 he was surely entitled to the benefit of Government of India letter dated 1.9.87 which was specifically made effective from 1.9.85. It is not denied that the applicant fulfilled the conditions required in that letter for taking into account special pay of Rs. 35/- in fixing his initial pay on promotion to the higher post. In view of this I direct the respondents to re-fix the pay of the applicant as on 2.9.85 in LSG taking

[Signature]

Palu 3.3/-
30/8/87
Corrected as per
orders of Hon. Secy
dated 24.1.87.
Palu
30/1/88

into account the special pay of Rs.35/- which he was drawing immediately before his promotion. His retirement benefits should also be revised accordingly. Respondents will give effect to this order and effect payment to the applicant of all arrears arising out of this order within a period of three months, from the date of receipt of this order.

4. The application is disposed of on the above terms, leaving the parties to bear their own costs.


Member (A) 16/1/89

an.

