

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH
* * * * *

Commercial Complex (BDA)
Indiranagar
Bangalore - 560 038

Dated : 2 JAN 1989

APPLICATION NO. 1116 88(F)

W.P. NO.

Applicant(s)

Shri R. Jagannathan
To

Respondent(s)
V/s The Deputy Director of Accounts (Postal),
Karnataka, Bangalore & another

1. Shri R. Jagannathan
No. 1309/3, Sri Rama Temple Street
Yeshwantpur
Bangalore - 560 022
2. Dr M.S. Nagaraja
Advocate
35 (Above Hotel Swagath)
Ist Main, Gandhinagar
Bangalore - 560 009
3. The Deputy Director of Accounts (Postal)
Karnataka Circle
III Floor, GPO Complex
Bangalore - 560 001
4. The Director General of Posts & Telegraphs
Dak-Thar Bhavan
New Delhi - 110 001
5. 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/XXXX/XXXXXX ORDER
passed by this Tribunal in the above said application(s) on 21-12-88.

*Served
K. M. R. Al-Deekh
2/1/89
Encl : As above*

*See
SECTION OFFICER
DRAFTING/EXCECRARY
(JUDICIAL)*

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: BANGALORE

DATED THIS THE TWENTYFIRST DAY OF DECEMBER, 1988.

Present: Hon'ble Shri P. Srinivasan ... Member(A)

APPLICATION NO. 1116/1988

Shri R. Jagannathan
Aged 42 years
S/o. Shri R. Ramanujam Iyengar
No. 1369/3 Sri Rama Temple Street
Yeshwantpur
Bangalore - 560 022

... Applicant

(Dr. M.S. Nagaraja, Advocate)

Vs.

1. The Deputy Director of Accounts
Postal, Karnataka
Bangalore.

2. The Director General of Posts
and Telegraphs
New Delhi.

... Respondents

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

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

O R D E R

The applicant Shri R. Jagannathan
who was working as a Junior Accountant in the office
of the Deputy Director of Accounts Postal, Bangalore,
was promoted as Senior Accountant in the same office
with effect from 15.11.1984. Immediately, before
his promotion he was drawing a special pay of Rs 35/-
as Junior Accountant. On his promotion, his pay in
the higher post of Senior Accountant was fixed without



P. S. N.

....2/-

reference to FR 22 (C). Not only that, the special pay which he was drawing in the lower post was also ignored in fixing his pay on promotion to the higher post. In Application No. 4/1986 filed before this Tribunal, a certain R. Santhanam, who, like the applicant had been promoted to the post of Senior Accountant from that of Junior Accountant with effect from 14.7.1983 claimed that his pay in the post of Senior Accountant should be fixed under FR 22(C). The respondents therein resisted this claim on the ground that appointment of a Junior Accountant as Senior Accountant did not constitute a promotion. Disposing of this application, a Bench of this Tribunal speaking through Hon'ble Shri L.H.A. Rego, Member (A), held that the "appointment of the applicant from the grade of Junior Accountant to that of Senior Accountant which has a distinctly higher time-scale of pay, is indicative of higher responsibility involved and is, therefore, in the nature of a promotion", and therefore directed the respondents to fix the pay of R. Santhanam in the higher grade under FR 22(C). That order was passed on 13.11.1986. Thereafter the applicant approached the authorities to extend to him the same treatment as was accorded in Santhanam's case. His request was turned down by the respondents in their letter dated 28.10.1987. Aggrieved with this rejection

the applicant has approached this Tribunal with the present application.

2. Dr. M.S. Nagaraja, learned counsel for the applicant placed reliance on the decision in Santhanam's case and contended that the facts of the present case are in all material response similar to those in Santhanam's case. The applicant was therefore, entitled to the benefit of fixation of pay on his promotion as Senior Accountant in accordance with FR 22(C).

3. Shri M.S. Padmarajaiah, learned counsel for the respondents, while admitting that the facts of the present case are in pari materia with those obtaining in Santhanam's case submitted that the respondents in Santhanam's case had taken the matter to the Supreme Court by a Special Leave Application, which is pending. He reiterated the stand of the respondents here that the appointment of a Junior Accountant as a Senior Accountant is not a promotion.

4. After considering the rival contentions I have no hesitation in upholding the claim of the applicant because it is fully covered by a decision of a Division Bench of this Tribunal by which I am bound. Even apart from this I am in respectful agreement with the views expressed by the Bench in Santhanam's case for the reasons stated therein. In view of this the applicant's claim has to succeed.

P. S. B. S.



5. Dr. Nagaraja also submitted that while fixing the applicant's pay in the post of Senior Accountant, the special pay which he was drawing for over 3 years as Junior Accountant ^{had been} should also have ~~to be~~ be taken into account. But the respondent did not do so. In support of his claim, Dr. Nagaraja relied on a decision rendered by me sitting as a Single Member Bench in P.S.V. Chari Vs. Director General of Post and Telegraphs, New Delhi and another/ (Application No. 788/1988) P.S.V. Chari like the applicant was drawing a special pay of Rs 35/- while working as Junior Accountant. He contended that on his promotion as Senior Accountant with effect from 11.10.1985, the special pay being drawn by him in the lower post should be taken into account for fixing his initial pay in the higher post. When the matter was being heard my attention was drawn to a letter dated 1.9.1987 issued by the Ministry of Finance by which special pay of Rs 35/- given to an Upper Division Clerk in non-secretariat administrative offices for attending to work of a more complex and important nature is to be taken into account for fixation of pay on promotion to a higher post subject to 2 alternative conditions i.e., that the incumbent is a substantive holder of the post to which the special pay is attached or that on the date of his appointment to the higher post he has been drawing special pay in the lower post for not less than 3 years. That order was to take effect from 1.9.1985. Relying on this letter I directed the

P. S. V. Chari

respondents to allow the claim of the applicant who was promoted as Senior Accountant with effect from 11.10.1985 and to take into account the special pay of Rs 35/- that was being drawn by him as Junior Accountant in fixing his pay in accordance with FR 22(C) on his promotion to the post of Senior Accountant. Dr. Nagaraja urged that the applicant was entitled to a similar ruling.

6. Shri M.S. Padmarajaiah submitted that the letter of the Ministry of Finance dated 1.9.1987, agreeing to treat special pay of Rs 35/- as part of pay for the purpose of fixing pay on promotion to a higher post was made effective from 1.9.1985. P.S.V. Chari was promoted after that date and in his case I had allowed this benefit. The present applicant was promoted as Senior Accountant from 15.11.1984. He was, therefore, not entitled to the benefit granted in the Ministry of Finance letter dated 1.9.1987. The present case was thus distinguishable on facts from that of P.S.V. Chari. He, therefore, submitted that the claim of the applicant in regard to the special pay of Rs 35/- which he was drawing as Junior Accountant is liable to be rejected. The date 1.9.1985 had not been picked from a hat and was not liable to be struck down as discriminating between those promoted prior to that date and those promoted subsequent to that date. The date had been ~~xx~~ fixed in an award given by the Board of Arbitration and had been accepted by the Government. Thus since it was not an arbitrary date, the benefit extended to persons promoted after that



date could not be given to those promoted before that date.

7. I have considered the matter carefully. What the Government decided in its letter dated 1.9.1987 was that special pay of Rs 35/- granted to an Upper Division Clerk in non-secretariat administrative offices for attending to work of a more complex and important nature should be treated as pay of the post held by him for fixing his pay in a higher post on promotion. It is not denied that special pay of Rs 35/- was allowed to the applicant for attending to work of a more complex and important nature and that there was no difference as between him in this regard and a person who was in receipt of special pay after the crucial date, i.e., 1.9.1985. That being so, it was indeed discrimination against the applicant when he was not allowed to count the special pay of Rs 35/- for the purpose of fixation of his pay in the higher post merely because he was promoted before a certain specified date. At the same time, I am of the view that he cannot be given the benefit contemplated in the Ministry of Finance letter dated 1.9.1987 prior to the specified date i.e., prior to 1.9.1985. This flows from the ratio of the judgement in D.S. Nakara Vs. Union of India and others AIR 1983 SC 130.

8. In the light of the above I pass the following orders:-

- i) The appointment of the applicant as Senior Accountant with effect from 15.11.1984 should be treated as promotion and his pay in the higher

post from that date should be fixed in accordance with FR 22(C) without taking into account Special pay of Rs.35/-.

- ii) Respondents will also fix the initial pay of the applicant from the same date i.e., 15.11.1984 notionally, applying FR 22C and taking into account the Special Pay of Rs.35/-, but give him the financial benefits flowing from this fixation from 1.9.1985 only.
- iii) All arrears due to the applicant as a result of the refixation of his pay as directed above should be worked out and paid to him within 3 months of the date of receipt of this order.

9. The application is disposed of on the above terms. But in the circumstances of the case, parties to bear their own costs.

Sd/-

Member (A)

TRUE COPY



MR.

[Handwritten signature]
SECTION OFFICER 21/109
CENTRAL ADMINISTRATIVE TRIBUNAL
ADVISORY BENCH
BANGALORE

80
Rajesh K
R 22/5
S. P. R. K.
D. No. 1987/89/ IVA

SUPREME COURT OF INDIA
NEW DELHI

5-5-89

Dated _____

From:

The Additional Registrar,
Supreme Court of India

To

The Registrar
Central Administrative Tribunal
at Bangalore.

PETITION FOR SPECIAL LEAVE TO APPEAL (CIVIL) NO. 4835 of 1989
(Petition under Article 136 of the Constitution of India,
for Special Leave to Appeal to the Supreme Court from the
Judgment and Order dated 21-12-88 of the High Court
of Central Administrative Tribunal at Bangalore in
Application No. 1116/88.

Deputy Director of Accounts & Anr. Petitioner s.

Versus

R. Jagannatha Respondent
Sir,

I am to inform you that the Petition above-mentioned
for Special Leave to Appeal to this Court was/were filed on
behalf of the Petitioner above-named from the Judgment/Order
of the Central administrative Tribunal at Bangalore

noted above and that the same was/were dismissed/disposed of

by this Court on the 4th day
of May, 1989.

178/89 54
22/5
Yours faithfully,

Signature
for ADDITIONAL REGISTRAR.

CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH

* * * * *

Commercial Complex(BDA)
Indiranagar
Bangalore - 560 038

Dated : 21 JUL 1989

CONTEMPT
PETITION
(CIVIL)

XXXXXX NO (S)

50 & 51

IN APPLICATION NOS.

1116 & 1026/88(F)

/ 89

W.P. NO (S)

Applicant (s)

Shri R. Jagannathan & anr

To

1. Shri R. Jagannathan

2. Shri R. Santhanam

(Sl Nos. 1 & 2 -

Senior Accountants
Office of the Deputy Director
of Accounts (Postal)
IV Floor, G.P.O. Complex
Bangalore - 560 001

3. Shri K. Suman
Advocate
35 (Above Hotel Swagath)
Ist Main, Gandhinagar
Bangalore - 560 009

Respondent (s)

v/s The Deputy Director of Accounts (Postal),
Bangalore & anr

4. The Deputy Director of Accounts (Postal)
Karnataka Circle
II Floor, GPO Complex
Bangalore - 560 001

5. The Director General of Posts
Department of Posts
Dak Tar Bhavan
Sansad Marg
New Delhi - 110 001

6. Shri M.S. Padmarajaiah
Central Govt. Stng Counsel
High Court Building
Bangalore - 560 001

Subject : SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith a copy of ORDER/STAY/INTERIM ORDER
passed by this Tribunal in the above said application(s) on 18-7-89.

Encl : As above

Parvatheshwar
DEPUTY REGISTRAR
(JUDICIAL)

In the Central Administrative
Tribunal Bangalore Bench,
Bangalore

R. Jagannatha & anr

K. Suman

CP 50/89 & 51/89 v/s The Deputy Director of
Accounts (Postal),
B'lore & anr
M.S. Padmarajaiah

Date	Office Notes	Orders of Tribunal
------	--------------	--------------------

C.P. No. 50 & 51/1989

KSPVC/LHARM(A)

18.7.1989

Petitioners by Shri K. Suman. Respondents by Shri M.S. Padmarajaiah.

In pursuance of our order dated 11.7.1989, the respondents have made payment of the amounts due to the petitioners on 17.7.1989. Shri Padmarajaiah has placed before us the relevant acquittance roll evidencing the payment of amounts due to the petitioners. Shri Suman having perused the same does not rightly dispute the receipt of the amounts due to the petitioners. We are also satisfied that the amounts due to the petitioners has been paid to them on 17.7.1989.

As the respondents have complied with our order in letter and spirit, these Contempt of Court Proceedings are liable to be ~~dismissed~~ We, therefore, drop these Contempt of Court Proceedings. But in the circumstances of the case, we direct the parties to bear their own costs.



TRUE COPY

Parole order
DEPUTY REGISTRAR (JDCT) M/1
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE

Sd —

Sd —

VC 18/7/89

M(A)