

CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH

Second Floor,  
Commercial Complex,  
Indiranagar,  
Bangalore-38.

Dated: 7<sup>Jun</sup> MAY 1994

To

1. Sri.Sanjeev Malhotra,  
All India Services,  
Law Journal,No.22,  
Tagore Park,Near Model Town,  
Delhi- 110 009.
2. M/s.Administrative Tribunal  
Reporter,No.90,Bhagar Sing  
Market,New Delhi-110001.
3. The Editor,Administrative  
Tribunal Cases,C/o.Eastern  
Book Company,No.34,Lalbagh,  
Lucknow-226001.
4. The Administrative Tribunals,  
Judgements,No.3857,Sector-32D,  
Chandigarh-1600047.
5. M/s.Services Law  
Reporter,No.108,  
Sector-27-A,  
Chandigarh.
6. The Chief Editor,  
Weekly Law Notes,  
Khanda Falsa,Jodhpur,  
Rajasthan.
7. The Deputy Secretary,  
Indian Law Academy,  
Rajajipuram,  
Lucknow-226017.
8. The Manager,  
Swamy Publishers(P)  
Limited,P.B.No.2468,  
No.164,R.K.Mutt Road,  
Sandhya Mansions,  
Rajannamalaipuram,  
Madurai-600 028.

Sir,

I am directed to forward herewith a copy each of the undermentioned Orders passed by a Bench of this Tribunal with a request for publication<sup>in</sup> the journals.

APPLICATIONS NO.

DATE OF THE ORDER.

1. O.A.No.593 of 1993.....Dated:- 26th May,1994.

Yours faithfully,

*R. Shanmugam*  
for DEPUTY REGISTRAR 7/6  
JUDICIAL BRANCH.

gm\*

*De Jena*  
*gn*

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CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH, BANGALORE

ORIGINAL APPLICATION NO.593/93

THURSDAY THIS THE TWENTY SIXTH DAY OF MAY, 1994

MR. JUSTICE P.K. SHYAMSUNDAR      VICE CHAIRMAN

MR. V. RAMAKRISHNAN                      MEMBER (A)

R

Smt. Mythili Rangaswamy,  
Chief Clerk,  
Office of the Chief Engineer(Cons),  
Railways No.18, Millers Road,  
Bangalore - 560 046

Applicant

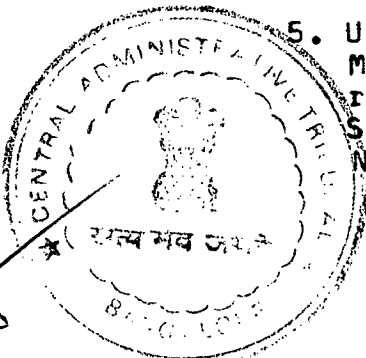
( By Advocate Anirudda Desai )

v.

1. The General Manager,  
Southern Railways,  
Headquarters Office,  
Madras - 3
2. The General Manager,  
South Central Railways,  
Secunderabad,  
Andhra Pradesh
3. The Financial Advisor and  
Chief Accounts Officer,  
Southern Railways,  
Headquarters Office,  
Madras
4. Chairman,  
Railway Board,  
Government of India,  
Ministry of Railways,  
New Delhi - 9
5. Union of India,  
Ministry of Railways,  
represented by its  
Secretary to Government of India  
New Delhi

Respondents

( By learned Standing Counsel for Railways )  
Shri A.N. Venugopal



ORDER

MR. JUSTICE P.K. SHYAMSUNDAR, VICE CHAIRMAN

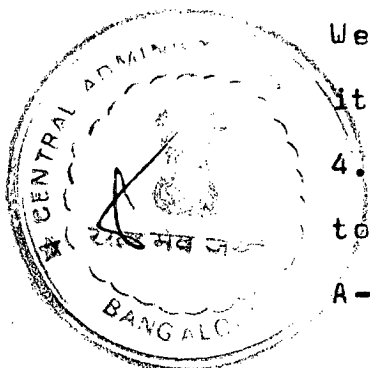
The applicant Smt. Mythili Rangaswamy is the widow of one Rangaswamy who died in harness while serving the Railway Administration currently represented by R-1 to R-5 in this application. When Rangaswamy died while in service, the applicant was given a family pension including DA as well. It so transpires that the applicant Mythili Rangaswamy secured an appointment for herself with the Railways on compassionate grounds on 16.1.1974. But subsequently, in the year 1977, the Railway Administration re-considered its position vis-a-vis people drawing a pension but later put on the pay roll of the Railways and said that in such cases the payment of ad hoc relief is suspended but where it is continued, that amount would be required to be returned (Annexure A-8). A clarifactory order at R-2 has been produced by the Railway Administration in that behalf.

2. Aggrieved by these two orders viz. withdrawing the ad hoc relief/DA on family pension, the applicant agitated for restoration of the second benefit from 1977 but without any avail. Hence this application for restoration of the D.A. on family pension etc. etc. Realising that her action in challenging the orders of the Railway Administration passed in the year 1977 but notified in 1978, might be met with a plea of limitation, the applicant seeks condonation of delay in the filing of this

application pointing out inter alia that she had not kept quiet all these years but had been continuously representing to the authorities and finally after realising that her pleas met no response from them she has approached this Tribunal for redressal of her grievances. The application is resisted by the Railway Administration both on merits and also on grounds of limitation. It is urged that no reasons have been adduced for condoning the delay. The mere fact that the applicant had been representing repeatedly is no substitute for the statutory remedy available to the applicant. On merits the Administration points out that the applicant is employed with the Railways and nonetheless still received family pension and all that the Administration has taken away is the D.A. which is otherwise compensated by the salary the applicant gets.

3. We have heard the learned counsel for the applicant and the learned Standing Counsel Shri A.N. Venugopal. We are not inclined to accept the submissions of the Railway Administration and we think that the Administration has taken an unduly harsh view of the situation in seeking to make a gain out of the misfortune of the applicant who lost her husband while in service. We admit this application and proceed to dispose of it as follows:

4. We find and we are somewhat astonished to notice that there is no legal sanction for A-8 and R-2 viz. orders withdrawing DA from the



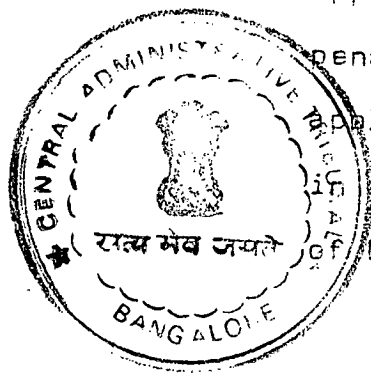
family pension accorded to a widow of an erstwhile employee. Both orders purport to have been made on grounds of alleged administrative authority. We do not know how the Railway Administration thought it fit to ~~break~~<sup>field</sup> some kind of administrative sanction in the absence of any legal authority.

5. The grant of family pension or as a matter of fact a regular pension is regulated under the rules. There are a set of rules governing the payment of family pension which fact is not in dispute. Those rules provide for payment of DA on family pension and in the absence of any other rule giving powers to the Administration to take away that relief of DA, the Administration could not have reviewed the same. We think that any administrative fiat would not be adequate for denying that benefit. We may point out that Rule 55(A)(ii) in the Central Pension Rules which authorises the Union Government/ State Government etc. etc. to withdraw DA on pension in case of re-employment reads as follows:

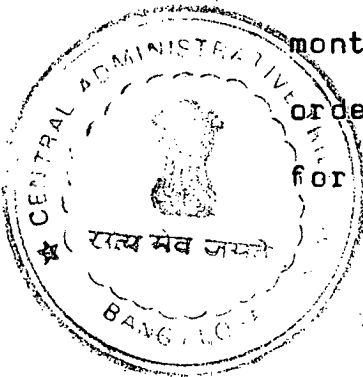
"If a pensioner is re-employed under the Central or State Government or a Corporation/ Company/Body/Bank under them in India or abroad including permanent absorption in such Corporation/Company/Body/Bank, he shall not be eligible to draw dearness relief on pension/family pension during the period of such re-employment."

6. We are not told that there is a like provision in the Railway Pension Rules under which the Administration are empowered to withdraw DA on pension in the course of re-employment. We may also point out that the rule supra refers to a person who is re-employed. But here the widow has been granted

an appointment on compassionate grounds. Be that as it may, the action of the Railways is unjustified for in the absence of any rule warranting withdrawal of DA on family pension, the same could not have been done. A mere administrative order would be inadequate to enable the Administration to make any such move. For these reasons, we find the denial of DA on family pension to be wholly untenable and unjustifiable. We, therefore, strike down that part of A-8 and R-2 which empowers the Railway Administration to stop payment of DA on family pension. Consequently, the applicant would now be entitled to DA on family pension but the question is and that is the more pertinent one being the time factor that can permit the applicant to claim such relief. We cannot obviously grant relief from 1978 because the Administration Tribunal itself was not yet thought of. As a matter of fact, the applicant seeks condonation of delay in the making of this application. We do not think there is any need for condonation of delay because the right of the applicant that is denied is a recurring one, it goes on and on till it is actually remedied. It does seem to us that we could go back to a period of three years from the date of the application but in this case we think it appropriate to limit the tracking back of the applicant's relief regards payment of DA on family pension just to one year prior to the making of this application. This application having been filed in June, 1993, she would become entitled to payment of DA on family pension from the month of June, 1992,



and onwards. Accordingly, we make a direction to the respondents for grant DA on family pension to the applicant with effect from June, 1992, and thereafter. There will be no order as to costs. We further direct respondents to comply with the directions made as above within three months from the date of receipt of a copy of this order. Send a copy of this order to R-1 and R-2 for information and needful action.



*Sd-*  
( V. RAMAKRISHNAN )  
MEMBER (A)

*M* *Sd-*  
( P.K. SHYAMSUNDAR )  
VICE CHAIRMAN

TRUE COPY

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*Sd. Shankar*  
SECTION OFFICER 7/6  
CENTRAL ADMINISTRATIVE TRIBUNAL  
ADDITIONAL BENCH  
BANGALORE

CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH

Second Floor,  
Commercial Complex,  
Indiranagar,  
Bangalore-560 038.

Dated:-

<sup>Jun</sup>  
7 MAY 1994

APPLICATION NUMBER: 593 of 1993.

APPLICANTS:

RESPONDENTS:

Smt. Mythili Rangaswamy, v/s. The General Manager, Southern Railways,  
To. Madras and Others.

1. Sri. Anirudha Desai, Advocate, No. 16,  
Second Floor, S.S.B. Mutt Buildings,  
Tank Bund Road, Bangalore-560 009.
2. The General Manager, Southern Railways,  
Headquarters Office, Park Town, Madras-3.
3. The General Manager, South Central Railways,  
Secunderabad, Andhra Pradesh.
4. Sri. A.N. Venugopala Gowda, Advocate,  
8/2, Upstairs, R.V. Road, Bangalore-4.

Subject:- Forwarding of copies of the Orders passed by the  
Central administrative Tribunal, Bangalore.

Please find enclosed herewith a copy of the ORDER/  
STAY ORDER/INTERIM ORDER/, passed by this Tribunal in the above  
mentioned application(s) on 26-05-1994.

*E. S. S. S. S.*  
for DEPUTY REGISTRAR  
JUDICIAL BRANCHES.

gm\*

*Of*  
*Issued*  
*gm*



12

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Chief Clerk,  
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Secunderabad,  
Andhra Pradesh
3. The Financial Advisor and  
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4. Chairman,  
Railway Board,  
Government of India,  
Ministry of Railways,  
New Delhi - 9
5. Union of India,  
Ministry of Railways,  
represented by its  
Secretary to Government of India  
New Delhi

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( By learned Standing Counsel for Railways )  
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ORDER

MR. JUSTICE P.K. SHYAMSUNDAR, VICE CHAIRMAN

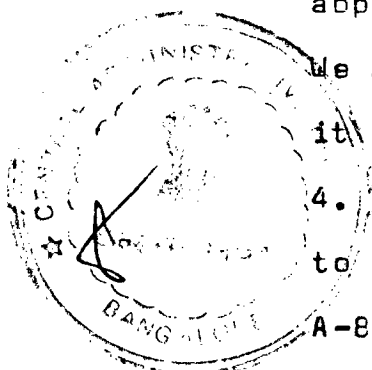
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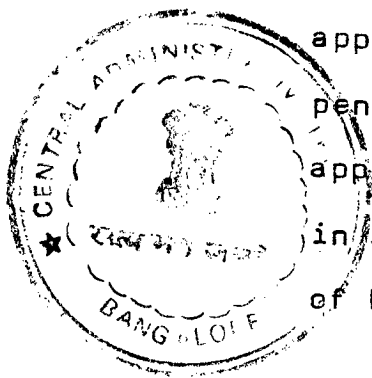
family pension accorded to a widow of an erstwhile employee. Both orders purport to have been made on grounds of alleged administrative authority. We do not know how the Railway Administration thought it fit to ~~bring~~<sup>File 10</sup> some kind of administrative sanction in the absence of any legal authority.

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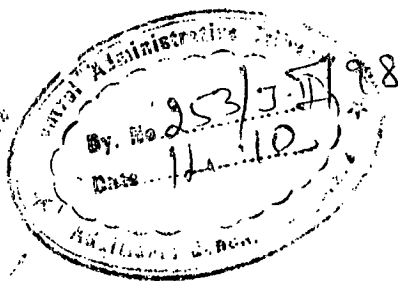
*Sd-*  
( V. RAMAKRISHNAN )  
MEMBER (A)

*Sd-*  
( P.K. SHYAMSUNDAR )  
VICE CHAIRMAN

TRUE COPY

US

*S. S. Ramani*  
SECTION OFFICER  
CENTRAL ADMINISTRATIVE TRIBUNAL  
ADDITIONAL BENCH  
BANGALORE



SECTION IV-A

D.No. 17082/94/Sec. IV-A

SUPREME COURT OF INDIA  
NEW DELHI.

From:

The Assistant Registrar,  
Supreme Court of India,

DATED: 26.9.1998.

To:

The Registrar,  
Central Administrative Tribunal, Bangalore.

Recd. by post as  
R.L. No. 840.  
R.5/10/98

CIVIL APPEAL NO. 4911/1998

(Arising out of SLP(C) No. 1240/1996 from the Judgment and Order & note dated 26.5.1994 of the High Court of Karnataka at Bangalore in O.A. No. 593 of 1993).

The General Manager, Southern Railway  
& Ors.

-Versus-

Smt. Mythili Rangaswamy

Sir,

Enter in SLP Register,  
O.A. Register, add to file  
ATE....Appellants Thereafter Ote  
a copy of this with a copy of  
O.A. order as per R.143 of  
...Respondent. of R.P. 13.

In pursuance of Order XIII, Rule 6, S.C.R. 1966, I am directed by their Lordships of the Supreme Court to transmit herewith a certified copy of the ~~Judgment~~/Signed Order dated the 11.9.1998 in the appeal above-mentioned. The Certified copy of the decree made in the said appeal will be sent later on.

Please acknowledge receipt.

Yours faithfully,

*R. S. R.*  
ASSISTANT REGISTRAR

Copy to:

JK/3rd Sept. 98

1-17-1944

1-17-1944

STATIONER, LINDSEY & BROS. INC. 1000-1001

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