

CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH

Second Floor,  
Commercial Complex,  
Indiranagar,  
Bangalore-560038.

Dated: 1 OCT 1993

APPLICATION NO(S) 582 of 1993

APPLICANTS: R. Hanuman Singh RESPONDENTS: Secretary, Ministry of  
TO. Defence, New Delhi and Others

1. Sri. M. Raghavendrachar, Advocate, no. 1074 and 1075, fourth Cross,  
Sreenivasa nagar II phase, Banashankari 1st stage, Bangalore-560050.
2. Air Commodore/Air Officer Commanding,  
Institute of Aviation Medicine/Aerospace Medicine (IAF)  
HAL Post, Vimanapura, Bangalore-560017.
3. Sri. M. S. Padmarajiah, Sr. Central Govt. Legal Counsel,  
High Court Building, Bangalore-1.
4. Local Addt Officer, 26, ED (Air Force), HAL Post, Bangalore-560027.

Subject:- Forwarding of copies of the Order passed by  
the Central Administrative Tribunal, Bangalore.

Please find enclosed herewith a copy of the  
ORDER/STAY/INTERIM ORDER, passed by this Tribunal in the  
above said application(s) on 30-09-93.

*M. Deve S*  
for DEPUTY REGISTRAR  
JUDICIAL BRANCHES.

1/10/93

*Issued*

*gm*

*Mc*

gm\*

CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH: BANGALORE

DATED THIS THE THIRTIETH DAY OF SEPTEMBER, 1993.

Present: Hon'ble Shri S. Gurusankaran, Member (A)

Hon'ble Shri A.N. Vujjanaradhya, Member (J)

APPLICATION NO.582/1993

Shri R. Hanuman Singh  
Major, Son of Shri L. Rathan Singh  
Ex- Civilian M.T.D.  
"Vanitha Vilas"  
Muniramappa Compound  
5th Main, 7th Cross  
Gangenahalli  
Bangalore - 560 032

.... Applicant

(Shri M.R. Achar, Advocate)

Vs.

1. Air Commodore  
Air Officer Commanding  
Institute of Aviation Medicine  
HAL Post, Bangalore-17.
2. Air Vice Marshal  
Senior Officer, I/C  
Administration  
Hq Training Command  
IAF, Hebbal, Bangalore-560 006.
3. Local Audit Officer  
26, ED (AIR FORCE)  
HAL Post, Bangalore-560 027.
4. Central Defence Accounts  
(CDA) AF, West Block  
VI, R.K. Puram, New Delhi.66.
5. The Union of India  
represented by its Secretary  
Ministry of Defence, Govt. of India  
South Block, New Delhi.
6. The Chief Controller of Defence  
Accounts (P), Allahabad.

.... Respondents

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

This application having come up for Orders  
before the Tribunal today, Hon'ble Shri S. Gurusankaran,  
Member (A), made the following:



O R D E R

In this application the applicant is aggrieved by the order dated 25.10.1991 (Annexure-A4) by which the period of absence from duty from 1.7.1978 to 30.11.1987 was treated as DIES NON denying him all arrears of salary for the period but, without treating that period as a break in service, as per the orders of this Tribunal dated 28.10.1987 in O.A.486/1987. He has prayed for setting aside the order dated 25.10.1991 and directing the respondents to count the period between 1.7.1978 to 30.11.1987 as qualifying service for the purpose of pension, to extend the leave facilities to which the applicant was entitled to during that period and to grant bonus.

2. The facts of the case are not in dispute. While working as a Driver in the Institution of Aviation Medicine, Bangalore, a departmental enquiry was initiated against the applicant and he was dismissed from service with effect from 30.6.1978. Against the said order, without availing alternative remedy, the applicant filed a writ petition no.98/1980 in the High Court of Karnataka and the same was dismissed on 23.9.1985. The applicant filed a writ appeal no.2226/1985 and a Division Bench of the High Court of Karnataka disposed off the same with liberty to approach the competent authority. The applicant preferred an appeal and the appeal was rejected. The applicant filed O.A. 1762/1986 before this Tribunal against the rejection of his appeal and the same was disposed off by a Bench of this Tribunal setting aside the order of the Appellate authority and directing him to restore the appeal to its original file and redetermine the same. In pursuance of the said order the Appellate Authority

again dismissed the appeal vide order dated 2.5.1987 and the applicant filed O.A. 486/1987 before this Tribunal. This application was disposed off by a Bench of this Tribunal vide order dated 28.10.1987 as follows:-

- " (a) We uphold the orders of the AA and the DA to the extent they hold that the applicant was guilty of the charges proved either in whole or in part and dismiss this application to that extent.
- (b) We allow this application in part, and modify the orders of the AA and the DA to the extent they relate to punishment imposed by them, to that of reduction of pay of the applicant by two stages from Rs 342/- per mensem which he was drawing as on 30.6.1978, to Rs 326/- per mensem in the then time scale of pay Rs 320-6-326-8-390-10-400 to which he was entitled for a period of two years, without cumulative effect.
- (c) We direct the respondents to reinstate the applicant to service with all such expedition as is possible in the circumstances of the case and in any event not later than 1.12.1987 denying him all arrears of salary due to him from 1.7.1978 till he is actually reinstated to service. But, notwithstanding the same, the aforesaid period shall not be treated as a break in service of the applicant for all other purposes. "

The respondents had challenged the orders of this Tribunal before the Supreme Court in SLP No.14922/1987 and the same was rejected. In pursuance of the orders of this Tribunal, the applicant was reinstated in service vide order dated 10.2.1988 (Annexure-A1). Even though the applicant was not entitled to arrears of pay and allowances from 1.7.1978 to 30.11.1987, the period was counted for granting the applicant notional increment and also giving effect to the revised punishment of reduction of pay of the applicant by two stages for a period of two years without cumulative effect as per the



orders of this Tribunal dated 28.10.1987. The applicant finally retired from service on superannuation on 30.9.1990 and just before his superannuation the order dated 21.9.1990 (Annexure-A4) treating the period 1.7.1978 to 30.11.1987 as DIES NON was passed. Aggrieved by the said order the applicant preferred a contempt petition no.93/1990 before this Tribunal and the same was disposed off vide order dated 17.12.1991 dropping the contempt proceedings and giving liberty to the applicant in case he is aggrieved by the decision of the authorities in fixing his pension and other benefits on the basis of the judgement of the Tribunal dated 28.10.1987 in O.A. 486/1987. Accordingly, the applicant has filed this application. The respondents have filed their reply contesting the application and explaining that they have completely complied with the orders of this Tribunal.

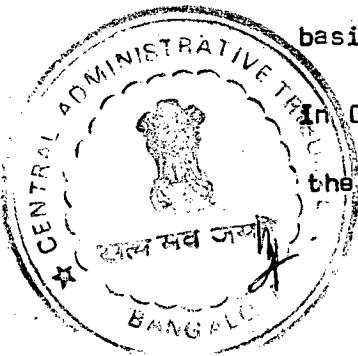
3. We have heard Shri M.R. Achar for the applicant and Shri M.S. Padmarajaiah for the respondents and perused the records produced before us. Shri Achar submitted that while the applicant was denied arrears of salary for the period from 1.7.1978 till he was actually reinstated in service by the orders of this Tribunal, it was directed that the aforesaid period shall not be treated as a break in service of the applicant for all other purposes. In view of this Shri Achar contented that the period from 1.7.1978 to 30.11.1987 should not have been treated as DIES NON and should have been counted as qualifying service for pension. Shri Achar also argued that even as per orders dated 25.10.1991, the period from 1.7.1978 to 30.11.1987 should not be treated as break in service. Shri Achar pointed out that the orders of this Tribunal dated 28.10.1987 clearly directed the respondents to treat the period of interruption

between the date of dismissal and reinstatement of applicant as on duty. He vigorously argued that once the period is treated as duty, the applicant would be eligible for earning leave during that period and also counting that period as qualifying service for pension and the applicant will not be entitled to <sup>any</sup> ~~any~~ arrears of pay and allowances as per the orders of this Tribunal.

4. Shri Padmarajaiah for the respondents pointed out that as per FR 54, the President of India has, taking all the facts into consideration, regularised the period of absence from duty between 1.7.1978 to 30.11.1987 as DIES NON. In view of this, the respondents have acted strictly as per the rules and the above period will not count for qualifying service and since it has not been treated as duty the applicant will not also earn any leave during that period.

5. Having heard the submission of both the parties, we are of the view that this application is thoroughly misconceived. We have carefully gone through the orders of this Tribunal dated 17.12.1991 dropping the contempt proceedings in C.P. No.93/1990 and it has been stated therein that "on a perusal of the contempt petition and the stand taken by the alleged contemners, we are unable to see as to how any particular direction given by the Tribunal has been violated". It was further observed that "it was not explained to us by the learned counsel for the contempt petitioner as to how this calculation and the payment paid or proposed to be made on this basis contravenes any of the directions of this Tribunal

in O.A. 486/1987 disposed off on 28.10.1987". Apart from this, the orders of this Tribunal dated 28.10.1987 had clearly held



that "the applicant was guilty of the charges proved <sup>and</sup> only to the extent the orders of the AA & DA were upheld dismissing the application to that extent". It is also observed that the Tribunal did not give any specific directions as to how the period from 1.7.1978 till the applicant was actually reinstated in service should be treated : as duty or suspension etc. All that the Tribunal ordered, while directing to reinstate the applicant after reducing the punishment to that of reduction of pay of the applicant by two stages for a period of 2 years, was that the said period should not be treated as a break in service of the applicant for all other purposes. Since the respondents have counted the period of service rendered by the applicant prior to 1.7.1978 for the purpose of calculating the qualifying service evidently they have not treated the intervening period as break in service. It is also seen that as per FR 54 the competent authority has to pass a specific order while reinstating the employee, who has been dismissed, removed or compulsorily retired, regarding the pay and allowances to be paid to the employee during the period of absence and whether or not the said period shall be treated as a period spent on duty. In this case the reinstatement was ordered by the Tribunal and no directions were given as to how the period should be treated except for holding that the applicant would not be entitled to any arrears of pay during that period and that period shall not be treated as a break in service. Rule 25 of the CCS Pension Rules clearly lays down that the period of interruption in service between the date of dismissal and the date of reinstatement shall not count as qualifying service unless regularised as duty or leave by a specific order of the authority which passed the order of reinstatement. In view of the fact that the period exceeded more

than 5 years, the sanction of the President has been obtained for treating the period as DIES NON and hence that period cannot be counted for qualifying service or for earning leave.

6. In the light of the above, we find no merit in this application and accordingly the application is dismissed. No order as to costs.

Sd/-

17/9/93

(A.N. VIJAYANARADHYA)  
MEMBER(J)

Sd/-

17/9/93

(S. GURUSANKARAN)  
MEMBER(A)

**TRUE COPY**

H. Ober

SECTION OFFICER  
CENTRAL ADMINISTRATIVE TRIBUNAL  
ADDITIONAL BENCH  
BANGALORE

17/9/93

