

CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH

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

Dated: **18 JAN 1994**

APPLICATION NO(s) 638 of 1993.

APPLICANTS: Syed Noorulla v/s. RESPONDENTS: Collector of Central  
Excise, Bangalore & Others.

TO.

1. Sri.H.S.Ananthapadmanabha,  
Advocate, No.108, NHCS Layout,  
III Stage, Fourth Block,  
Basaveswaranagar, Bangalore-79.
2. Collector of Central Excise,  
Post Box No.5400, Queen's Road,  
Bangalore-560 001.
3. Sri.G.Shanthappa, Addl. Central  
Govt. Stng. Counsel, High Court Bldg,  
Bangalore-560 001.

SUBJECT:- Forwarding of copies of the Orders passed by  
the Central Administrative Tribunal, Bangalore.

-xxx-

Please find enclosed herewith a copy of the  
ORDER/STAY ORDER/INTERIM ORDER/, Passed by this Tribunal  
in the above mentioned application(s) on 06-12-1993.

*S. S. Shanbhav*  
DEPUTY REGISTRAR  
JUDICIAL BRANCHES.

gm\*

*Of*  
*Issued*  
*gm*

CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH :: BANGALORE

APPLICATION NO.638/1993

DATED THIS THE SIXTH DAY OF DECEMBER, 1993

Present: Shri S. Gurusankaran, Member (A)  
Shri A.N. Vujjanaradhya, Member (J)

Shri Syed Noorulla  
Aged 60 years  
Inspector Of Central Excise (Retired)  
No.16, Anjaneya Temple Street  
IV Cross, Yellagundapalyam  
Bangalore - 560 047 ..... Applicant  
(By Shri H.S. Ananthapadmanabha, Advocate)

Vs.

1. Collector  
Central Excise  
Queen's Road  
P.B. No.5400  
Bangalore-560 001.
2. Additional/Deputy Collector  
Customs & Central Excise  
Queen's Road, P.B. No.5400  
Bangalore-560 001.
3. Chief Accounts Officer  
Customs & Central Excise  
P.B. No.5400, Queen's Road  
Bangalore - 560 001. .... Respondents  
(Shri G. Shantappa, Advocate)

Judgement delivered by Shri S. Gurusankaran, Member(A)

In this application filed under Section 19 of the Administrative Tribunals Act, 1985 the applicant is aggrieved by the orders of the respondents dated 4.11.1992 (Annexure-A1) and 29.3.1993 (Annexure-A12) under which the applicant's pay has been refixed and he has been directed to make good the overpayment of Rs 82,408/- so as to settle his pensionary benefits. The applicant has prayed for the following reliefs:



- a) To quash the pay fixation order C.No. II/24/31/90 D.3 dated 4.11.1992 Annexure-A1 (Impugned order);
- b) To quash the demand of Rs 82,408/- raised in letter C. No.II/25/28/90 D.4 dated 29.3.1993 (Annexure-A12);
- c) To direct the respondents to release the DCRG due to the applicant;
- d) To direct the respondents to grant full admissible pension basing on the pay that was being drawn at the time of retirement;
- e) To direct the respondents not to make any recovery from the DCRG due to the applicant;
- f) To direct the respondents to pay 18% PA interest on the withheld DCRG amount that was wrongly withheld by the respondents from the date it was legitimately due to the applicant till the date of payment;
- g) To award the cost of this application;
- h) To grant such other reliefs as is deem fit and expedient in the circumstances of the case.

2. The respondents have filed their reply contesting the application.

3. We have heard Shri H.S. Ananthapadmanabha for the applicant and Shri G. Shantappa for the respondents. Shri Ananthapadmanabha pointed out that as per Rule 19(2) (a) of the C.C.S (Pension) Rules, 1972 (Rules for short), the competent authority issuing the order of substantive appointment to civil service or post as is referred to in sub-rule 19(2) shall along with such order require in writing the Government servant to exercise the option under that sub-rule within 3 months of date of issue of such order. He submits that the respondents have failed to do so as is clear from the copy of the order of confirmation<sup>advised</sup> dated 5.1.1979 (Annexure-A4). Shri Ananthapadmanabha argued that since the respondents have failed to give the applicant the option and due to their own mistake the applicant has been made some overpayments for a long period of time, it would be against the principles of equity to demand from the applicant

after his retirement to refund such a heavy amount like nearly Rs 82,000/- as overpayment. Shri G. Shantappa for the respondents pointed out that while the respondents have failed to give the option as required in the rules, nothing prevented the applicant from exercising the option. We are not impressed with this argument. The Government of India have also issued number of circulars that in order to not to put severe burden on employees retiring from service due to any overpayments made entirely due to the mistakes committed by the Government, the recovery of overpayment should be restricted to the last 3 years. It is true that the Government has a right to correct its mistakes so as to avoid paying excess amount by way of salary or pension for future period. However, we find that the respondents have not issued any show cause notice to the applicant before revising his pay retrospectively and also the pension due to him. At the same time, the applicant has stated that the authorities competent to remedy the grievances have themselves erred and failed to follow the guidelines given by the Ministry, no other statutory remedy is available to him under the relevant service rules. We are unable to accept this line of argument. As per Rule 23(iv) of CCS(CCA) Rules, 1965 any Government servant can submit an appeal to the appropriate Appellate Authority against an order which denies or varies to his disadvantage his pay, allowances, pension etc., or interprets to his disadvantage the provisions of any such rule or agreement.

4. Shri Ananthapadmanabha, produced before us a copy of the order dated 16.8.1991 passed by a Bench of this Tribunal in O.A.640/1990. He submitted that, that was an exactly similar case in which the applicant, who was a retired Army pensioner, had not been given the option and the Tribunal directed the respondents therein to consider the option exercised by the



applicant therein to ~~consider the option exercised by the~~

applicant therein under Rule 19 of the Pension Rules and fix his pension and other terminal benefits accordingly.

Shri G. Shantappa for the respondents was shown the copy of the judgement and except for reiterating the submission already made in the reply that since the applicant had not also exercised the option within the period he cannot be given any option at this stage. *He kept the submission of the respondents.*

5. In the result, we allow this application partly with the following directions:

(i) The orders dated 4.11.1992 (Annexure-A1) and 29.3.1993 (Annexure-A12) are set aside.

(ii) The respondents are directed to give an option to the applicant as per Rule 19(2)(a) of the Rules within 15 days from the date of receipt of a copy of this order. On receipt of such an option, the applicant is directed to exercise option within a period of 15 days from the date of receipt of the option.

(iii) On receipt of the option exercised by the applicant the respondents are directed to fix his salary, pension and other pensionary benefits in accordance with law and make all the due payments within a period of 4 months from the date of receipt of the option. The respondents are directed to get all calculations ready before hand so that there is no delay in settling the payment in accordance with law since the applicant has already retired in February, 1991 and he has been sanctioned only provisionary pension in the meanwhile. While taking decision as per the option the observations made by this Bench regarding recovery of overpayment made because of the administrative error should be kept in mind. While sanctioning such revised pension and pensionary benefits, the respondents are directed to make all the adjustments, if any, for the amount to be recovered from the applicant.

6. The application is disposed of accordingly with no order as to costs.

*Sd-*  
(A.N. VIJANARADHYA)  
MEMBER (J)

*Sd-*  
(S. GURUSANKARAN)  
MEMBER (A)

mr.



TRUE COPY

*Sc Shauhar*  
SECTION OFFICER 18/1/94  
CENTRAL ADMINISTRATIVE TRIBUNAL  
ADDITIONAL BENCH  
BANGALORE