

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

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

Dated:-29 APR 1994

APPLICATION NUMBER:

698 of 1993.

APPLICANTS:

Sri.E.V.S.Nair, v/s. Secretary, Ministry of Defence, NDelhi & Others.
T.e.

RESPONDENTS:

1. Col.V.K.K.Nair(Retd), No.24, First Main Road,
Domlur Layout, Bangalore-560071.
2. Commandant, Sena Seva Corps Kendra(Dakshin),
Headquarters, ASC Centre(South), Bangalore-560007.
3. Sri.G.Shanthappa, Addl.Central Govt.Stng.Counsel,
High Court Building, Bangalore-1.

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 18th April, 1994.

Issued on

29/4/94

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of/c

S. Shashikar
for DEPUTY REGISTRAR
JUDICIAL BRANCHES.

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

O.A.NO.698/93

MONDAY THIS THE EIGHTEENTH DAY OF APRIL 1994

Shri Justice P.K. Shyamsundar ... Vice-Chairman

Shri V. Ramakrishnan ... Member [A]

No.7326762 Stenographer
[Grade III], E.V.S. Nair,
ASC Centre [South],
Bangalore-560 007.

... Applicant

[By Advocate Col. V.K.K. Nair]

v.

1. Union of India
represented by the Secretary
to the Ministry of Defence,
South Block, DHQ PO,
New Delhi-11.
2. Chief of the Army Staff,
Army Headquarters,
DHQ PO New Delhi-11.
3. The Director General of Supplies
and Transport,
Quartermaster General's Branch,
Army Headquarters,
DHQ PO New Delhi-11.
4. The Commandant,
ASC Centre [South],
Bangalore-560 007. ... Respondents

[By Advocate Shri G. Shanthappa, Central Govt. Standing
Counsel]

O R D E R

Shri Justice P.K. Shyamsundar, Vice-Chairman:

1. Admit. The applicant is a Stenographer classified as a Civilian in Defence Establishment and working presently as Personal Assistant ['PA' for short] to the Brigadier, Commandant, ASC Centre, Bangalore.



He actually began his tenure with the Army Service Corps as a Grade ~~II~~ Stenographer following his appointment on 18.6.1973 and it is somewhat astonishing to notice that he continued to be Grade ~~II~~ Stenographer till today i.e., after 21 years of secretarial experience as Stenographer which itself is a factor that should have resulted in some improvement in his career prospects but that is not how it turned out to be as the action impugned herein tells us.

2. It so happened in July 1981, the post of Commandant Colonel of ASC Centre was upgraded to the post of a Brigadier. As long as he was serving the Commandant Colonel to whom the applicant was appointed as PA on 1.3.1983, he was in the pay scale of Rs.330-560 in the pre-revised pay scales. But it must be said that even before he was borne on the establishment of the Commandant Colonel the said post had been upgraded and designated as Brigadier Commandant. Therefore, when he was actually assigned duties of a PA he became attached to the Brigadier, ASC Centre.

3. But under a Government Order CPRO 75/81 dated 1.5.1981 the pay scale of a Stenographer attached to the former Colonels who later became Brigadier stood revised to Rs.425-700 in the pre revised scale and stood revised to Rs.1400-2300 after revision of pay scales. To this scale of Rs.1400-2300 the applicant automatically became entitled upon assumption of duties as PA to the Brigadier in terms of CPRO 75/81. But he did not get that enhanced pay scale

automatically and was therefore constrained to approach the higher authorities for the benefit of the higher pay scale. The prolonged correspondence which finally ended with letter from the Addl. Director General Supplies and Transport who is the controlling authority for ASC Centre dated 30.5.1989 turning down the applicants request for higher scale of pay on the ground that right then there was a ban order regarding creation of posts and, therefore, until the ban was relaxed requests for enhancement of pay scales could not be considered. Apparently the department was treating the case of the applicant as transformation into a new and higher post which does not appear to be correct. Later on the ASC Centre itself took up the matter with the Army top brass pointing out inter-alia that all that the man was asking was for higher pay scale and not higher job and that Government may if necessary relax the ban order but even this effort did not yield any result. Finally placing reliance on the judgment of a sister Bench of the Central Administrative Tribunal at Allahabad in O.A. No.554/1986 disposed of on 25.7.1991 wherein the applicant was a Stenographer borne on the ASC Centre establishment, Bareilly, another sister establishment coming within the same wingspan of ASC Centre, South and ASC Centre, North, all clustered under the ASMT which is the controlling authority. In other words the three ASC Centres are all similar units, placed under separate commands under different commandants, the Allahabad Bench in a considered order accepted

the case of the applicant therein for improvisation of pay scales upon his attachment as PA to the Commandant. In the course of the judgment, their Lordships demolished the objections put forward on behalf of Government pointing out that the upgradation of the pay scales had nothing to do with the ban on recruitment and creation of new posts. Their Lordships found that it is not a case of creation of a new post but it was a simple case of revision of pay scales. It was also pointed out that even assuming that there was a ban on recruitment the improved scale of pay to Stenographers having been introduced by Government in 1978 and hence in any event the ban would not have made any difference at all because upgradation itself was found to be warranted and granted in 1978 that too during the prevalence of the ban order. It would be proper to set out the relevant portion of the judgment which reads thus:

"8. In the year 1977 the Central Government imposed a general ban on the creation of new posts in the Government as an economy measure. The ban was total except for operational and technical staff. The ban continued to be operative till 1988 when it was further extended. The point to be noticed here is that though the ban was imposed in 1977, the improved scale of pay to Stenographers was introduced by the Government in 1978. Obviously the latter policy decision did not amount to creating new posts as would attract the ban."

Further the Tribunal supported its view further as per para 11 which reads thus:

"11. As regards the ban on the creation of new posts,

the same could not have come in the way of implementing the policy in Annexure-1 which created no new post but only improved the pay scale of a certain category of Stenographers. Learned counsel for the applicant has drawn our attention to Army Head Qrs. letter No.A/59829/RUL/RECTT/Q/ST 12 dated 16th April, 1985, [Annexure V attached to Annexure 3] which clarifies that all actions which are required to fill up a promotion post can be taken subject to the condition that the lowest level of the chain vacancies consequent thereon will not be filled during the ban period. In other words there was no ban on promotions, but where that resulted in a chain vacancy, at the lowest level, it was not to be filled up. In the instant case, there was no question of any chain vacancies. All that was to be done was to grant a higher scale of pay to the applicant and redesignate the same appointment as Stenographer Grade 1 [S.P.A.]. As regards the redesignation, the same was clearly spelt out in Department of Personnel and Administrative Reforms O.M. No.22038/1/79-Estt[D] dated 8th April 1980 [Annexure I attached to Annexure-3]. Referring to the posts of Stenographer Gr.1 sanctioned vide Annexure 1, it lays down that these may be designated as Stenographers Gr.1. Incidentally this Government letter would also dispense with the requirement of each Army unit and establishment taking up separate cases to amend their respective P.Es. for change of designation. Since what was involved in the Government decision was merely a change of designation and grant of a higher scale of pay, it would more appropriately amount to grant of promotion, in the ordinary language, and certainly not to the creation of new post as was interpreted by the respondents."

We are in full agreement with the views of the Allahabad Bench of the Tribunal and actually which is also binding on us. The learned Standing Counsel tells us that the judgment of the Allahabad Bench was fully implemented and as a matter of fact we find that a subsequent endorsement at Annexure A-1 dated 23.7.1993 was issued pursuant to a reference made by the ASC Centre. The communication issued by the Directorate General of Supplies and Transport, Quartermaster General Branch, Army Hqrs reads:

"1. Reference your letter NO.CHQ/0358/Steno/-ST-12[Civ] dated 3 Jul 93.

2. A case for grant of promotion to all eligible Stenographers in the ASC was projected to



the Ministry, consequent to the favourable court judgment in the case of Shri AP Aggarwal. The Ministry, however, has opined that although there may be more similarly placed officials, an individual court decision cannot be made generally applicable."

It is seen from the above that the Army Hqrs has denied the upgraded pay scale to the applicant holding that it would not be available to everyone in the establishment and that the judgment of the Allahabad Tribunal in the case of Shri Aggarwal was applicable only to him and not to any other person, a ground which we think to be highly imaginary and untenable.

4. In matters relating to service people borne on establishments of like nature cannot be allowed to suffer any disparity in treatment with reference to their service conditions which ought to be same wherever they are. The Tribunals all over the country have deplored the tendency to confine the judgment of a Tribunal deciding an issue on a principle of general character making it a judgment in rem not being extended to others in similar situations but making the judgment as in personam as a most unsatisfactory way of dealing with Government servants leading as it does to discontentment and depletion in efficiency. We do not think it necessary to restate those axiomatic principles. This is a clear case in which the applicant became entitled to the higher pay scale the moment he was attached to a Commandant Colonel who had by then became a Brigadier. The pay scale was there and was sanctioned vide CPRO which we have referred to and obviously there was no reason to deny the pay scale to which he had become legitimately entitled to. Instead of granting a straightforward request time and again, refuge was taken by the respondents to, we find some imaginary and illusory defence, a conduct which does not commend itself to us.

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5. Nonetheless the learned Standing Counsel says that we should throw out this application on the ground of laches and delay. He says that the prayer for hiking pay scale was turned down in the year 1989 on the ground of there being a ban on creation of new posts, till 1992 there being a lull on the part of the applicant, we should not now be enthused to take action in an application filed before us in the year 1993. We do not agree. We find in 1991 and 1992 there was a move to solicit the Government to relax the ban on creation of new posts which did not, however, find favour and later on reliance was placed on the judgment of the Allahabad Bench of the Tribunal in 1991 and on the basis of that judgment reconsideration of the applicant's claim was sought for and that move came to naught only in the year 1993 and thereafter the applicant has come before this Tribunal for redressal of his grievance. We, therefore, hold that there is no delay or laches in the prosecution of this application, treat the submission based on delay and laches as unfounded.

6. For the reasons mentioned above this application succeeds and is allowed. Annexure A stands quashed. There will now be a direction to the respondents to compute and grant the benefit of higher pay scale as PA to Brigadier Commandant in the revised scale of Rs.1400-2300 but we limit the financial benefits to a period of three years prior to making this application on 5.8.1993. In other words the increased pay scale will be computed and paid to him with effect from 5.8.1990 in that the benefits ^{with effect from 1.3.83} will be notionally computed, but actual benefits made available to the applicant with effect from 5.8.1990 and onwards till the

date of realisation. No costs.

Sd/-



Sd/-

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VICE-CHAIRMAN

TRUE COPY

S. Raghavay
SECTION OFFICER 29/4
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE