

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

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

Dated: 10 MAR 1994

APPLICATION NO(s) 757 of 1993.

APPLICANTS: K. Rama Rao and three Others. v/s. RESPONDENTS: Dy. Secretary, M/o. Finance, New Delhi & Others.

TO.

1. Sri. H. S. Ananthapadmanabha, Advocate,
No. 108, NHCS Layout, IIIrd Stage,
Fourth Block, Basaveswaranagar,
Bangalore-79.
2. Collector of Central Excise,
Queen's Road, P.B. No. 5400,
Bangalore-1.
3. Sri. M. Vasudeva Rao, Addl. Central Govt. Stng. Counsel,
High court bldg, Bangalore-1.

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

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Please find enclosed herewith a copy of the
ORDER/STAY ORDER/INTERIM ORDER/, Passed by this Tribunal
in the above mentioned application(s) on 08-03-1994.

Issued
10/3/94

for DEPUTY REGISTRAR
JUDICIAL BRANCHES.

gm*

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

O.A. NO.757/93

TUESDAY THIS THE EIGHTH DAY OF MARCH 1994

Shri V. Ramakrishnan ... Member [A]

Shri A.N. Vujjanaradhya ... Member [J]

1. K. Rama Rao,
S/o K. Anantha Rao,
Aged 55 years,
Supdt. of C. Ex.
Bangalore III Divn.,
Infantry Road,
Bangalore-560 001.
2. K. Narayanan,
S/o N. Krishna Rao,
Aged about 55 years
Supdt. of Central Excise,
Hqrs. Office,
P.B. No.5400,
Queen's Road,
Bangalore.
3. L.M. Mirza Ismail,
S/o Moosa Khan,
Aged 60 years,
Supdt. of C. Ex. [Retd.],
No.11/2, Khazi Street,
Opp. Mosque,
Mohamadan Block,
Basavanagudi,
Bangalore-.4
4. M. Kunhapan,
S/o M. Raman,
Aged 59 years,
Supdt. of C. Ex. [Retd.],
No.79, V Ward, Ekkachi,
At & PO Pillicode,
Kasargod Dist.
Kerala 671 353.

... Applicants

[By Advocate Shri H.S. Ananthapadmanabha]

v.

1. Deputy Secretary, Govt. of India,
Ministry of Finance,
Department of Revenue [Ad.II A],
New Delhi-110 001.

Collector of Central Excise,
Queen's Road, P.B. No.5400,
Bangalore-1.



3. Additional/Deputy Collector
Customs and Central Excise,
Queen's Road, P.B.No.5400,
Bangalore-56 00 01.

..Respondents

[By Advocate M.Vasudeva Rao, Addl. Standing Counsel]

O R D E R

Shri A.N. Vujjanaradhya, Member [J]:

1. The applicants are aggrieved by the denial of their claim of stepping up of pay at par with that of their juniors and have filed this application under Section 19 of the Administrative Tribunals Act, 1985, seeking the following reliefs:

- i. to direct the respondents to step-up the pay of the applicants on par with that of their juniors with effect from 1.1.1986;
- ii. to direct the respondents to re-fix the pay of the applicants, consequent on their promotion as Superintendent of Central Excise [Group 'B'];
- iii. to award the cost of this application.

Briefly stated, the case of the applicants is as below: The applicants are Central Government employees in Group B cadre working in various offices under the administrative control and jurisdiction of the Collector of Central Excise, Bangalore as Superintendents of Customs and Central Excise ['Supdt.' for short]. Some of the applicants have since retired. There were certain anomalies in the pay between the applicants and their juniors and the 1st respondent rejected the claim of the applicants for stepping up of their pay with that of the juniors by a criptic order dated 24.3.1993 [Annexure A-1]. The applicants are seniors compared to their juniors viz., S/s Mallikarjunaiah, M.M. Raviraj, R.V. Ramakrishnappa and M.S.S. Murthy both in the grade of Inspector of Central Excise ['Inspector' for short] and Supdt. as can be seen from the seniority list found at Annex-

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ure A-2. The applicants were drawing more pay all through. The scale of pay of Inspectors was revised from Rs.425-800 to Rs.500-900 from 1.1.1980 vide letter dated 27.8.1987 [Annexure A-3]. Consequent on such revision of pay scale the juniors on their promotion to the nonfunctional selection cadre [NSC] between 1.1.1980 and 31.12.1985 was originally fixed under FR 22[a][ii] in the scale of Rs.550-900 in the light of instructions contained in the Ministry of Finance letter dated 6.10.1987 communicated vide Collector of Central Excise ['Collector' for short], Bangalore Establishment Standing Order No.109/87 dated 12.11.1987 [Annexure A-4]. Even after such refixation the pay for the juniors, the applicants were drawing more pay compared to their juniors, as can be seen from pay chart at Annexure A-5. When the applicants were awaiting their promotion to NSC in their term, the Central IV Pay Commission merged the Ordinary Grade ['OG' for short] and Special Grade ['SG' for short] into a single unified grade of Inspector with effect from 1.1.1986 vide notification dated 22.9.1986 [Annexure A-6]. Consequently the seniors were deprived of their legitimate promotion as Inspector SG. Even after the merger of OG and SG into unified cadre, the applicants stood senior to Mallikarunaiah and others and were enjoying higher pay in the revised scale also. The applicants continued to be senior all along and there was no provision under the Recruitment rules to treat Inspectors SG enblock as senior to Inspectors OG. In supersession of ESO No.109/87 dated 12.9.1987 [Annexure A-4] Government of India, Ministry of Finance, Department of Revenue, issued revised instructions regarding fixation of Pay of the Inspectors promoted to SG between 1.1.1980 and 31.12.85 vide their letter dated 6.12.1990 which was communicated as ESO No.3/91 dated 4.1.1991 [Annexure A-7]. Accordingly the



pay of the abovementioned juniors were revised as on the date of their promotion as Inspectors SG and consequently refixation order was also made with effect from 1.1.1986 under CCS [Revised Pay] Rules, 1986 ['RP rules' for short], as per recommendation of Central IV Pay Commission. This has resulted in the pay of the said juniors being revised at Rs.2000 in the scale of Rs.1640-2900 with effect from 1.1.1986 as can be seen from Annexure A-8. The applicants were appointed much earlier and continued to be senior all through and were drawing more pay all through till the issue of the above ESO 3/91 dated 4.1.91. Even after the promotion of the juniors as Supdt. subsequent to the applicants, their pay was fixed in higher stage with reference to their pay in the grade of Inspector which was higher due to refixation of pay consequent on ESO 3/91. In the normal course seniors would have got higher pay than the juniors but for the issue and implementation of ESO 3/91 and, therefore, the applicants are aggrieved by the retrospective benefit given to the juniors. The applicants have filed separate representations before 2nd respondent requesting to step up their pay on par with their juniors as per Annexure A-11 and the same was turned down by ill-reasoned and criptic order dated 2.4.1992 by the Collector as in Annexure A-12. Aggrieved, the applicants have represented before the ministry as per Annexure A-13 which was also rejected by the ministry and communicated to the applicants by 2nd respondent through his letter dated 20.4.1993 which is at Annexure A-1. Hence the application for the above stated reliefs on the ground that failure to step up the pay of the applicants as compared with that of their juniors is violative of Articles 14 and 16 of the Constitution and the rejection of the claim of the applicants is arbitrary and illegal.

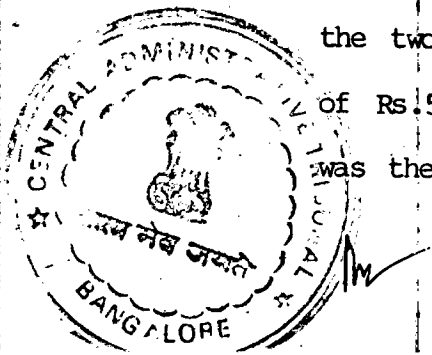
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3. The respondents in their reply while not disputing the facts contend that refixation of the pay of the juniors to the applicants is quite in order and the same is not open to challenge as it is just and proper.

4. We have heard Shri H.S. Ananthapadmanabha, learned counsel for the applicant and Shri M. Vasudeva Rao, learned Standing Counsel for the respondents and perused the records.

5. Drawing our attention to the fact that seniority of the applicants vis-a-vis their juniors viz. Mallikarjunaiah and others has not been altered even after the promotion of the applicants as also their juniors to the grade of Supdt., learned counsel referring to note 4 under Rule 7 of RP Rules contended vehemently that the pay of the seniors should be fixed on par with that of their juniors. Our attention was also brought to note 7 under Rule 7 and Rule 8 of RP Rules and the decision of Govt. of India at para 21 under Rule 7 of the RP Rules.

6. The facts are not in dispute. Mallikarjunaiah and others who were juniors to the applicants were promoted to the grade of Inspector SG in the pay scale of Rs.550-900 before the applicants. The OG was previously of the scale of Rs.425-800 which was revised to Rs.500-900 and option was given to opt to the revised scale. Because the applicants were getting more than Rs.500 per month they did not choose to opt for the same. Anyhow this did not alter the position in any manner, inasmuch as the pay scale of the SG was Rs.550-900 to which Mallikarjunaiah and others were promoted. Subsequently after IV Pay Commission, the two pay scales of Rs.425-800 revised to Rs.500-900 and SG of Rs.550-900 were merged and a common scale of Rs.1640-2900 was the revised scale. Therefore, it is the contention of the



learned counsel for the applicants that had the two scales of the OG and the SG continued, they would have also been promoted and they would have come on par with that of their juniors. We are not prepared to accept this contention inasmuch as the juniors got promoted to the SG earlier to that of the applicants and their pay was required to be revised and refixed as per ESO 3/91 [Annexure A-7] dated 4.1.1991. After considering all aspects, as could be seen from Annexure A-7 it was clarified as below:

"3. The matter has been examined in consultation with the DOP & T and Department of Expenditure and it has been decided that the Inspectors [OG][Rs.500-900] promoted during the period from 1.1.80 to 31.12.85 as Inspector [Senior Grade] [Rs.550-900] may also be given the benefit of F.R.22[1][a][i] [formerly FR 22-C].

4. It has also been decided to extend the same benefit of fixation of pay under F.R.22[a][i] to Preventive Officers-Examiners [OG] who had the Ordinary Grade of Rs.500-900 and Senior Grade of Rs.550-900 before 1.1.86. In this regard this Department's letter F No.A 26017/85/87-Ad.IIA[pt.I] dt 24.1.89 also refers.

5. As per the decision on the preceding paragraphs, this Department's letters dated 6.10.87 and 24.1.89 stand modified accordingly. This position may be brought to the notice of all concerned officers and they may be allowed to exercise a fresh option for fixation of pay in this regard. The option should be exercised within 90 days of issue of this letter and shall be final.

6. Attention is also invited to this Department's letter F No.A 26017/55/87-Ad.II A[Pt.] dt.13.3.89 wherein the erst-while Inspectors [SG] having financial hardship in opting the revised scale of Rs.500-900 with effect from 1.1.1980 were allowed to revise their option. These officers may once again be allowed to exercise a fresh option. These officers may once again be allowed to exercise a fresh option for fixation of pay in this regard."

Accordingly the pay of the juniors to the applicants was revised and refixed and, therefore, they came to be fixed at Rs.2000 retrospectively with effect from 1/86 whereas the applicants pay was fixed at a stage lower than that of those promoted to



Inspectors SG. This refixation cannot be challenged by the applicants, inasmuch as they have not sought to assail this ESO 3/91 dated 4.1.1991 [Annexure A-7]. The applicants only seek to step up their pay with that of their juniors with effect from 1.1.1986. As the vires of ESO 3/91 is not challenged the refixation of pay of juniors of the applicants is not open to challenge as either arbitrary or unjust or violative of Articles 14 and 16 of the Constitution of India.

7. Learned counsel for the applicants mainly relied on the decision Nos.21, 23 and 24 of Rule 7 of RP Rules read with note 4 and 7 under Rule 7 of RP Rules and FR 22.C. It would be advantageous to quote the relevant provisions for better appreciation of the contentions of the learned counsel. The learned counsel primarily relied on Govt. of India decision No.21 below Rule 7 of the RP Rules which states as follows:

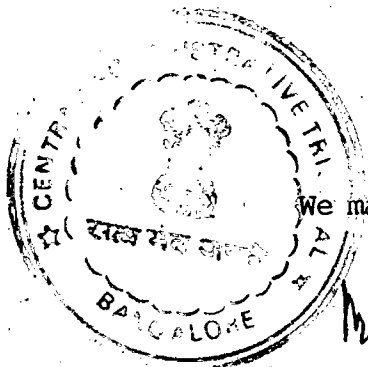
"Attention is invited to Note 4 below Rule 7 and the 2nd proviso to Rule 8 of CCS[RP] Rules, 1973. Seniority of Government servants for the purpose of stepping up their pay or fixing the date of increments with reference to the pay or the date of increments of their juniors as envisaged in the above mentioned rules may be determined with reference to the seniority rosters maintained for the purpose of confirmation/promotion etc.

This has to be read with note 4 below Rule 7 which read as follows:

"Note 4: Where in the fixation of pay under sub-rule [1] pay of a government servant, who, in the existing scale was drawing immediately before the 1st day of January, 1986, more pay than another Government servant junior to him in the same cadre, gets fixed in the revised scale at a stage lower than that of such junior, his pay shall be stepped up to the same stage in the revised scale as that of the junior."

x x xx x"

We may also refer to Note 7 below Rule 7:



"Note.7: In cases, where a senior Government servant promoted to a higher post before the 1st day of January, 1986, draws less pay in the revised scale than his junior who is promoted to the higher post on or after the 1st day of January 1986, the pay of the senior Government servant should be stepped up to an amount equal to the pay as fixed for his junior in that higher post. The stepping up should be done with effect from the date of promotion of the junior Government servant subject to the fulfillment of the following conditions, namely:-

[a] both the junior and the senior Government servants should belong to the same cadre and the posts in which they have been promoted should be identical in the same cadre,

[b] the pre-revised and revised scales of pay of the lower and higher posts in which they are entitled to draw pay should be identical, and

[c] the anomaly should be directly as a result of the application of the provisions of FR 22-C or any other rule or order regulating pay fixation on such promotion in the revised scale. If even in the lower post, the junior officer was drawing more pay in the pre-revised scale than the senior by virtue of any advance increments granted to him, provisions of this note need not be invoked to step up the pay of the senior officer."

This Note 4 and 7 will have to be read with reference to revised and refixed pay of the juniors to the applicants, inasmuch as the refixation of the pay of the juniors is now challenged in this application. Bearing this aspect in mind when Note 4 and 7 are read, it would be clear that the said provisions do not apply to the case of the applicants. Note 4 stipulates that the senior should be getting more pay than the junior Govt. servant before 1.1.1986 which is not the case herein as can be seen from Annexure A-5. Note 7 Rule 7 of RP Rules also is not attracted inasmuch as that Note 7 requires both the junior and the senior Govt. servant should belong to the same cadre and post in which they have been promoted which should be identical in the same cadre. This is not the case herein. Mallikarjunaiah and others were in the SG whereas the applicants were not in that grade. The pre-revised scales in respect of the applicants was not identical to the ^{pre-}revised scale of Shri Mallikarjunaiah

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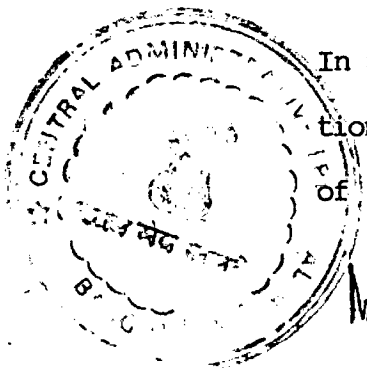
and others and that anomaly is not directly as a result of application of provisions of FR 22[C]. Thus the applicants are not entitled to seek any benefit even under Note 7 of Rule 7 of RP Rules.

8. Reference to Government of India decisions at paras 23 and 24 also do not give any benefit to the applicants inasmuch as decision at para 23 speaks of stepping up permissible for a second time with reference to the same junior which is not the question under consideration herein. Decision at para 24 is only in respect of a revised scale of Rs.800-1150 which is also not applicable to the facts of the present case. These contentions raised in the application cannot be upheld for the reasons stated above.

9. Coming to FR 22[C] the aspect of removal of anomaly for stepping up of pay of senior on promotion drawing less pay than his junior is referred to in para 23. For the purpose of stepping up pay of senior to that of junior, three conditions are required to be satisfied. Those are more or less similar to the conditions stipulated under Note 7 of Rule 7 of R.P. Rules and read thus:

- "a. Both the junior and senior officers should belong to the same cadre and the posts in which they have been promoted or appointed should be identical and in the same cadre;
- b. The scales of pay of the lower and higher posts in which they are entitled to draw pay should be identical;
- c. The anomaly should be directly as a result of the application of FR22-C. For example, if even in the lower post the junior officer draws from time to time a higher rate of pay than the senior by virtue of grant of advance increments, the above provisions will not be invoked to step up the pay of the senior officer."

In the instant case as was discussed earlier, none of these conditions is satisfied by the applicants inasmuch as the juniors of the applicants were not in the same grade and the scale of



pay in the lower and higher posts were not identical as also the anomaly was not directly as a result of the application of FR 22-C. Consequently the applicants are not entitled to seek stepping up of their pay to the level of their pay of their juniors in this application.

10. Learned counsel for the applicants relied on certain decisions and sought support for their contention from those decisions. In OA No.1106/93 C.B.YACOB AND OTHERS V. UNION OF INDIA AND OTHERS and in O.A.No.337/93 C.K. NAIR V. CHIEF GENERAL MANAGER, TELECOM, on the file of Ernakulam Bench of this Tribunal, stepping up of pay of the seniors to that of juniors was allowed relying on some earlier decisions mentioned therein. In these two decisions the facts are not set out in detail and, therefore, it is rather difficult to conclude that the decision arrived at is applicable to the facts of the present case. However, from the decisions quoted which are reported, it is possible to distinguish the same and demonstrate that the same are not applicable to the facts of the present case. Those decisions are [a] SMT. N. LALITHA AND OTHERS V. UNION OF INDIA reported in [1992]19 ATC 569; [b] P. GONGADHARA KURUP & OTHERS V. UNION OF INDIA AND OTHERS reported in 1993[1] ATJ 165; and ANIL CHANDRA DAS AND ANOTHER V. UNION OF INDIA AND OTHERS reported in [1988] 7 ATC 224. In the cases of Anil Chandra Das and Smt. Lalitha, the cases relate to promotion on ad hoc basis of the juniors earlier than the applicant but their services were regularised after the applicants therein and, therefore, it was directed that the seniors pay should be stepped up to that of the junior because the anomaly arose because of the application of FR 22[C] which is not the case herein and, therefore, the applicants cannot seek much support from those two decisions. So far as the decision of P. Gongadhara Kurup and others is concerned the scales

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of pay of the applicants therein and their juniors were the same as also the posts to which they were promoted and the anomaly was directly due to refixation which again is not the case in the one under consideration. Therefore, the ratio of these decisions cannot be applied to the facts of the present case. Thus none of the decisions from which the learned counsel for the applicants sought support is of any assistance to them.

11. Thus we find that Annexure A-1 to which letter dated 2x 29.3.1993 rejecting the representation of stepping up of the pay of the applicants was turned down in accordance with the rules and instructions and cannot be interfered with. Consequently the applicants cannot succeed and the application will have to be dismissed. In the result the application fails and the same is dismissed but without any order as to costs.

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8/3/94

MEMBER [J]



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E. S. S. S. S.
SECTION OFFICER
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH
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7/3/94

MEMBER [A]

OA 757/93

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

R.A. NO.37/94

MONDAY THIS THE TWENTY THIRD DAY OF JANUARY 1995

Shri V. Ramakrishnan ... Member [A]

Shri A.N. Vujjanaradhya ... Member [J]

BETWEEN

1. K. Rama Rao
2. K. Narayanan
3. Mirza Ismail
4. M. Kunhappan ... Applicants

[By Advocate Shri H.S. Ananthapadmanabha]

v.

1. Deputy Secretary
Govt. of India
Ministry of Finance
Department of Revenue [Ad. IIA]
New Delhi - 110001.
2. Collector of Central Excise
Queen's Road,
P.B. No.5400
BANGALORE - 560 001.
3. Additional/Deputy Collector
Customs & Central Excise
Queen's Road
P.B. No.5400
Bangalore - 560 001. ... Respondents

[By Advocate Shri M. Vasudeva Rao ...
Addl. Standing Counsel for Central Government]

O R D E R

Shri A.N. Vujjanaradhya, Member [J]:

1. Review of the order passed by this Bench in O.A. No. 757/93 dated 8.3.1994 is sought by the applicants on the following grounds:

[a] The applicants are subjected to injustice

in that they being seniors, their pay has not been stepped up to the level of their juniors thus denying natural justice to them;

[b] ESO 3/91 dated 4.1.1991 [Annexure A-7 annexed to O.A.] was not sought to be assailed as the applicants are not aggrieved but their grievance is that any such order should not put them to disadvantageous position;

[c] The decision rendered by the Ernakulam Bench of this Tribunal on which the review applicants have relied upon though referred to in the order, has not been followed and distinction is sought to be made on the ground that facts are not similar which is erroneous and that the ratio of the said decision is equally applicable to the facts of the case of the review applicants.

[d] In the decision of the Full Bench rendered in VIJAYAKUMAR SHRIVASTAVA AND OTHERS V. UNION OF INDIA AND OTHERS in O.A. No.30/86 dated 24.10.1986 it has been observed that the decision rendered by a Bench of the Tribunal in respect of similar matter is required to be followed by the other Benches of the Tribunal because the Tribunal is one and in case of any disagreement with the view of another Bench of the Tribunal, the course open to is to refer the matter to the Full Bench and not to differ.

2. We have heard Shri Ananthapadmanabha, learned counsel for the review applicants and Shri M. Vasudeva Rao, learned Standing Counsel for the respondents.

3. Shri Ananthapadmanabha advanced contentions similar to those stated above and the same were controverted to by the learned Standing Counsel.

4. Shri Rao contended that all the contentions raised by the review applicants have been considered in detail and the review applicants cannot be allowed to re-agitate the same points again and that review applicants have not pointed out any new point which was not avail-

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lable to them when the original application was heard in spite of they being diligent.

5. According to Shri Ananthapadmanabha, the pay of the seniors, the review applicants being seniors to those whose pay is shown to be higher than that of the review applicants being not in dispute, ought to have been stepped up because the case of the review applicants satisfies all the four conditions which he says were laid down by Ernakulam Bench and non--acceptance of such contention has resulted in meting out injustice to them and, therefore, it has resulted in erroneous conclusion being reached, which is an error apparent on the face of the record and it has to be rectified. He further contended that there are no specific guidelines applicable to the case of the applicants and, therefore, the same has resulted in rendering the decision which is impugned in this review application. We have referred to the Government Orders and guidelines relating to removal of anomaly and pointed out how juniors stood to gain advantage over the seniors viz., review applicants and the same was justified particularly when the review applicants have not sought to challenge ESO 3/91 dated 4.1.1991.

6. ESO 3/91 dated 4.1.1991 which is Annexure A-7 to the O.A. was brought into force retrospectively and the same is not sought to be assailed by the review applicants. At one stage the review applicants seek

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to contend that they are not aggrieved by the said ESO 3/91 and at another stage they contend that the said ESO 3/91 stands challenged by implication for seeking relief which is inconsistent and contradictory to the earlier stand. Such a stand cannot be appreciated and accepted as correct and on that ground it is not open to the review applicants to contend that an error apparent on the face of the record has crept in the order.

7. Regarding the contention relating to the support sought by the decision rendered in Ernakulam Bench of this Tribunal we have given our reasons for not following the same and, therefore, we are unable to accept the contention advanced by learned counsel for the review applicants. Of course, the facts in every case cannot be similar. But the principles of law should be shown to be applicable to the facts of the present case which the review applicants had not so made out. As we had only observed that the ratio of the decision of Ernakulam Bench is not applicable to the facts of the case of the review applicants, there was no question of referring the points that arose in the OA to the Full Bench. Consequently reference to the decision of the Full Bench in VIJAYA-KUMAR SRIVASTAVA & OTHERS v. UNION OF INDIA & OTHERS is not of any assistance to the review applicants.

8. As rightly contended by the learned standing counsel the contentions raised in the review applica-

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tions are the same that were considered in deciding the OA and no new points which were ^{not} available to the applicants earlier have been raised and no fresh ground which was not available to the review applicants in spite of due diligence was sought to be raised herein. Consequently ~~these~~ review applications ^l lacks merit and the same is hereby dismissed with no order as to costs.

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MEMBER [J]

MEMBER [A]

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Section Officer

Central Administrative Tribunal
Bangalore Bench
Bangalore