

CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH

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

Review Application No.46/93 in

Dated: 21 JAN 1994

APPLICATION NO(s) 618 of 1992.

APPLICANTS: Shivashankare v/s. RESPONDENTS: Secretary, Depatt. of Posts,  
New Delhi & Others.

TO.

1. Sri.V.V.Balan, Advocate,  
No.75, Muddappa Road Cross,  
Maruthisevanagar, Bangalore-33.
2. Sri.M.Vasudeva Rao,  
Central Govt. Stng. Counsel,  
High Court Bldg, Bangalore-1.

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 10-12-1993.

for DEPUTY REGISTRAR 21/1/94  
JUDICIAL BRANCHES.

gm\*

CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH: :BANGALORE

REVIEW APPLICATION NO.46/93

DATED THIS THE TENTH DAY OF DECEMBER, 1993

Present: Shri V.Ramakrishnan, Member (A)  
Shri A.N.Vujjanaradhya, Member (J)

Shri Shivashankara,  
Sorting Assistant,  
Bangalore TD Sorting Office,  
Bangalore - 560 001. ...Applicant

By Advocate Shri V.V.Balan

Versus

1. The Secretary,  
Department of Posts,  
New Delhi.
2. The Chier Postmaster General,  
Karnataka Circle,  
Bangalore.
3. The St. Supdt. RMS, Bangalore  
Sorting Divn. Bangalore-26. ...Respondents

By Advocate Shri M.Vasudeva Rao, C.G.S.C.

JUDGEMENT BY: SHRI V.RAMAKRISHNAN, MEMBER (A)

We have heard Shri V.V.Balan, the learned  
counsel for the applicant and also Shri M.Vasudeva  
Rao, the learned standing counsel for the respon-  
dents.

.....2/-

2. The applicant's contention is that in terms of the relevant instructions, after he had served out the penalty of reduction<sup>of</sup> pay by one stage for a period of three years without cumulative effect, his pay should have been fixed at Rs.1300/- and that when he was allowed to cross EB in 1992 his pay should have been fixed not at the next stage after EB i.e. Rs.1180/- but at Rs.1300/- by giving him further increments. Shri Balan also refers to Govt. of India decision No.5 (DG P & T letter dated 29th November, 1979) below PR 25 as per Swamy's Compilation of PR & SR 11th Edition. As per the judgement rendered, we have directed the department to implement their earlier order of allowing the applicant to cross the EB with effect from 10.2.1992 fixing the pay at a stage immediately after EB on that date and we have quashed the subsequent orders of the department, which postponed the crossing of EB to a later date. We had specifically gone into various issues raised by the applicant and come to this conclusion.

3. There is nothing at this stage to show that this is a fit case for review as there was no error apparent on the face of the record and no new material has been brought before us, which was not already known to the applicant. If the applicant is still aggrieved by the effect of the order, that

grievance cannot be agitated before us by way of a review application.

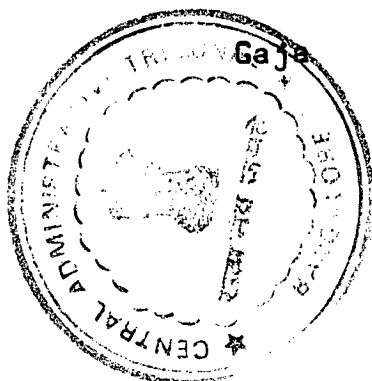
4. Accordingly we see no merit in this review application and dismiss the same.

*Sd- [Signature]*  
10/12/94  
(A.N.VUJJANARADHYA)  
MEMBER (J)

*Sd- [Signature]*  
16/12/94  
(V.RAMAKRISHNAN)  
MEMBER (A)

TRUE COPY

*Sd- [Signature]*  
SECTION OFFICER 21/1/94  
CENTRAL ADMINISTRATIVE TRIBUNAL  
ADDITIONAL BENCH  
BANGALORE



CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH

Annexure A

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

Dated: 21 JUL 1993

APPLICATION NO(s).

618/92

Applicant(s)

Respondent(s)

N. Shivashankara

Secy., D/o Posts & 2 ors.

1. Sh. N. Shivashankara,  
Sorting Assistant,  
Bangalore TD Sorting Division,  
Bangalore - 560001.
2. The Secretary,  
Deptt. of Posts,  
Dak Tar Bhavan,  
New Delhi - 110001.
3. The Director of Postal Services,  
O/o Chief Post Master General,  
Karnataka Circle,  
Bangalore - 560001.
4. The Senior Supt., R.M.S.,  
Bangalore Sorting Div.,  
Bangalore - 560026.
5. Sh. V. V. Balan, Adv.,  
78, Muddappa Road Cross,  
M.S. Nagar, Bangalore - 560033.
6. Sh. M. Vasudena Rao,  
Central Govt Standing Counsel,  
High Court Building,  
Bangalore - 560001.

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

Please find enclosed herewith a copy of the ORDER/  
~~STAY/INTERIM ORDER~~ passed by this Tribunal in the above said  
application(s) on 09-07-93.

  
DEPUTY REGISTRAR  
JUDICIAL BRANCHES.

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH : BANGALORE

DATED THIS THE NINETH DAY OF JULY 1993

Present:

Hon'ble Shri V. Ramakrishnan ... Member [A]

Hon'ble Shri A.N. Vujjanaradhya ... Member [J]

APPLICATION NO.618/92

N. Shivashankara,  
Sorting Assistant,  
Bangalore TD Sorting Division,  
Bangalore-560 001.

... Applicant

[Shri V.V. Balan ... Advocate]

v.

1. Union of India,  
the Secretary,  
Dept of Posts,  
Dak Tar Bhavan,  
New Delhi 110 001.

2. The Director of Postal Services,  
O/o Chief Post Master General,  
Karnataka Circle,  
Bangalore-560 001.

3. The Senior Supdt of R.M.S.,  
Bangalore Sorting Dn.,  
Bangalore-560 026.

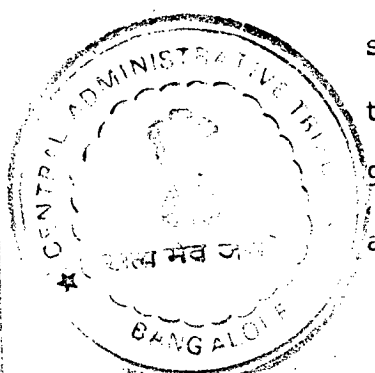
... Respondents

[Shri M. Vasudeva Rao ... Advocate]

This application having come up for orders before this Tribunal today, Hon'ble Shri A.N. Vujjanaradhya, Member [J], made the following:

ORDER

1. This is an application filed under Section 19 of the Administrative Tribunals Act, 1985, which came to be filed challenging the orders passed by Respondent ['R' for short] 3 [a] dated 9.6.1992 [Annexure A III], [b] dated 15.6.1992 [Also described as Annexure A-III], [c] dated 27.8.1992 [Annexure IV] and [d]



*Am*

dated 18.3.1989 [Annexure V] and seeking the following reliefs:

- a. entire proceeding of the respondents be treated as cancelled,
- b. pay of the applicant be fixed at Rs.1300 with effect from 9.2.1992 with DNI on 1.8.1992 and arrears be drawn with interest at 18%;
- c. Recovery of Rs.586 be declared irregular and be refunded with interest.

2. The facts as could be made out from the application and reply may be succinctly stated thus:

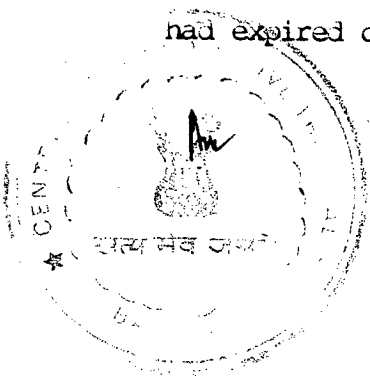
The applicant, who was working as a Sorting Assistant was due to cross Efficiency Bar [EB for short] from the stage of Rs.1150 to Rs.1180 on 1.8.1987. For certain irregularities, the applicant was kept under suspension from 11.6.1987 to 11.9.1987 and was not allowed cross EB with effect from 1.8.1987. Subsequently disciplinary proceedings instituted against him, ended with imposition of a penalty of reduction of his pay by one stage for a period of three years, as per memo dated 10.2.1989. This punishment was over by 9.2.1989. The case of the applicant was reviewed for crossing EB and was allowed to cross EB to the stage of Rs.1180 with effect from 10.2.92 immediately after the expiry of punishment [Annexure A III]. The department subsequently claimed that the same was erroneous with reference to FR 25, and applicant was allowed to cross EB with effect from 1.8.1992 [Annexure A IV] and amount said to have been irregularly paid was recovered from the applicant. Applicant challenging orders, has sought the reliefs mentioned above. Respondents seek to justify their orders.

3. The applicant has also filed OA No.572/92 challenging depart-

*Am*

mental enquiry and penalty imposed, which was also heard along with this application. On the ground of delay the said OA No.572/92 was found to be not maintainable and dismissed by a considered order by us. Therefore, the penalty imposed on the applicant stands and it is not open to challenge. Consequently the only point which is required to be considered in this application is whether fixation of the pay of the applicant after allowing him to cross the EB is or is not just, and if not just, what is the correct position.

4. Applicant was due to cross EB on 1.8.1987 in the pay scale of Rs.975-25-1150-EB-30-1660, from Rs.1150 to Rs.1180. But the applicant was imposed penalty of reduction of his pay by one stage for a period of three years without cumulative effect by memo dated 10.2.1989. The period of this penalty expired on 9.2.1992. R-3 after reviewing the case of the applicant had by order dated 15.6.1992 [Annexure A-III] allowed the applicant to cross EB with effect from 10.2.1992 and directed the fixation of pay from Rs.1150 to Rs.1180. This direction of R-3 was quite in order having regard to the expiry of penalty imposed on 9.2.1992. But curiously enough R-3 had further revised the order to take effect from 1.8.1992 on the ground that the date of actual drawal of increment of the applicant was on 1st August. This action of R-3 has the effect of postponing the date of increment by a further period from 10.2.1992 to 1.8.1992 i.e., by about  $5\frac{1}{2}$  months. No doubt the applicant's increment would be due on the 1st of August every year. Duration of imposition of penalty had expired on 9.2.1993 itself and, therefore, the order directing





9

the applicant to cross EB with effect from 10.2.1992 fixing the pay from Rs.1150 to Rs.1180 was quite in order. We are unable to understand as to why the applicant has sought to challenge even this order. Perhaps because of the reason that he was to normally cross EB on 1.8.1987 but for the effect of the suspension and subsequent disciplinary action taken against him. Because duration of the penalty imposed had expired only on 9.2.1992, the applicant became entitled to be considered for crossing EB therefrom. Accordingly R-3 had passed the order allowing the applicant to cross EB with effect from 10.2.1992 as per corrigendum dated 15.6.1992. This order which modifies the one dated 9.6.1992 [Annexure A III] was passed in accordance with law and the rules that are applicable. However, solely on the ground that the date of increment of the applicant was 1st August every year, R-3 had revised the order at Annexure A III as in Annexure A IV indicating that the applicant would be entitled to draw salary at the rate of Rs.1180 from 1.8.1992 and ordering recovery of excess payment of Rs.586 without giving any opportunity to the applicant to show cause against revising the earlier order. This order cannot be said to be justifiable one and it is erroneous. Actually as on 1.8.1992, the applicant had reached the basic pay of Rs.1180 with effect from 10.2.1992 after crossing EB on the basis of order dated 15.6.1992 and was entitled to the next increment in the scale of Rs.975-1660. In other words the applicant would be entitled to the basic pay of Rs.1210 in the said scale from 1.8.1992 in terms of GOI's order <sup>below</sup> ~~before~~ FR 25 - Swaney's Compilation of FR and SR., Eleventh Edition. The claim of the applicant that he would be entitled to Rs.1300

h

on 9.2.1992 with DNI on 1.8.1992 is not based on any valid interpretation of rules having regard to the penalty imposed on him and the circumstances of the case.

5. In view of what is discussed above we have to find that the order of fixation of salary of the applicant with effect from 10.2.1992 at Rs.1180 by order dated 15.6.1992 passed by R-3 as per Annexure A III should stand but not the subsequent revision thereto by order dated 27.8.1992 [Annexure A IV] as also the recovery of the difference that was paid to the applicant. Regarding Annexure A V dated 18.3.1989 stating that the applicant was not permitted to cross EB at the stage of Rs.1150--1180 with effect from 1.8.1987 cannot be challenged in this application because it is hopelessly barred by limitation, delay and laches which was also the conclusion that we have reached in O.A. No.572/92 disposed off by us today.

6. In the result we proceed to pass the following orders by allowing the application in part:

- a. The fixation of pay of the applicant as per corrigendum dated 15.6.1992 [Annexure A III] fixing the salary of the applicant from Rs.1150-1180 from 10.2.1992 should stand but not the revision thereof by order dated 27.8.1992 [Annexure A IV] indicating the date of effect as 1.8.1992 and the same is hereby quashed.
- b. The applicant who is found to be entitled to earn next increment with effect from 1.8.1992 is directed to be fixed at the next stage in the pay scale of Rs.975-1660.
- c. The applicant is entitled to the repayment of the sums recovered from him alleging the same to be irregular.
- d. The above directions shall be complied with by the respondents within three months from the date of receipt of a copy of this order.

TRUE COPY

SECTION OFFICER  
CENTRAL ADMINISTRATIVE TRIBUNAL  
ADDITIONAL BENCH  
BANGALORE

N. RAMAMURTHY.  
Deputy Registrar  
Central Administrative Tribunal  
Bangalore Bench, Bangalore

MEMBER [J]

MEMBER [A]

9/7/93