

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH
* * * * *

Annexure R 2

15

Commercial Complex (SDM)
Indiranagar
Bangalore - 560 038

Dated : 13 FEB 1989

APPLICATION NO (S) 772 to 778 /88(F) & 121 /89(F)

W.P. NO (S)

Applicant (s)

Shri Narasimhaswamy & 7 Ors

10

1. Shri Narasimhaswamy
No. 223, 11th 'B' Cross
J.P. Nagar II Phase
Bangalore - 560 078

2. Shri R. Krishnamurthy Rao
234, Shastry Nagar
Thyagarajanagar P.O.
Bangalore - 560 028

3. Shri M.R. Raghunatha Rao
428/A, 17th Main
Srinagar
Bangalore - 560 050

4. Shri S.K. Varadaraja Iyengar
563, 'Srinilaya', 16th Main
Srinagar
Bangalore - 560 050

5. Shri G. Narahari Rao
327, 58th Cross
III Vlock, Rajajinagar
Bangalore - 560 010

6. Shri T.S. Venkatesha Murthy
268, IIIrd 'Y' Block
Rajajinagar
Bangalore - 560 010

7. Shri K.S. Shamachar
1152, 58 Cross
Prakashnagar
Bangalore - 560 021

Respondent (s)

V/s The Secretary, M/o Communications, Dept of Posts,
New Delhi & 3 Ors

8. Shri A. Malleeswar
No. 31, II Stage
Postal Colony
Sanjay Nagar
Bangalore - 560 024

9. Shri M. Raghavendra Achar
Advocate
1074-1075, Banashankari I Stage
Sreenivasanagar II Phase
Bangalore - 560 050

10. The Secretary
Ministry of Communications
Department of Posts
Dak Bhavan, Parliament Street
New Delhi - 110 001

11. The Senior Superintendent of Post Offices
Bangalore South Division
Bangalore - 560 041

12. The Senior Superintendent of Post Offices
Bangalore West Division
Bangalore

13. The Senior Superintendent of Post Offices
Bangalore East Division
Bangalore

14. Shri M.S. Padmarajiah
Central Govt. Stng Counsel
High Court Building
Bangalore - 560 001

Subject : SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith a copy of ORDER/STAY/INTERIM ORDER
passed by this Tribunal in the above said application(s) on 2-2-89.

By *[Signature]*
DEPUTY REGISTRAR
(JUDICIAL)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BANGALORE

DATED THIS THE SECOND DAY OF FEBRUARY 1989

Present: Hon'ble Justice K.S.Puttaswamy

.. Vice Chairman

Hon'ble Shri L.H.A.Rego

.. Member (A)

APPLICATION NO. 772 to 778/88(F) & 121/89(F)

1. Naresimhaswamy,
No.223, 11th 'B'Cross,
II Phase, J.P.Nagar,
Bangalore 560 078.

B.A.Malleeswar,
31, II stage,
Postal Colony,
Sanjayanagar,
Bangalore 24.

2. R Krishnamurthy Rao,
234 Shastry nagar,
T.R.Nagar, P.O.,
Bangalore 560 028

3. M R Raghunatha Rao,
428/A 17th Main,
Srinagar, Bangalore 560 050

4 S V Varadiaraja Iyengar
553, Srinilya, 16th Main
Srinagar, Bangalore 560 050

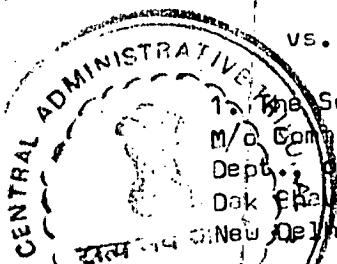
5. C Narahari Rao,
327, 58th Cross
III Block, Rajajinagar,
Bangalore 560 010.

6. T S Venkatesha Marthy,
268, 3rd 'Y'Block,
Rajaji nagar, Bangalore 560 010.

7. K S Shamsacher,
1152, 58 Cross,
Prakashnagar,
Bangalore 560 021.

.. Applicants

(Shri MF Achar .. Advocate)



1. The Secretary,
M/o Communications,
Dept. of Posts,
Dak Bhawan, Parliament St.,
New Delhi 110 001.

4. Senior Superintendent of
Post Offices,
East Division,
Bangalore.

2. Senior Superintendent of Post Offices,
BANG South Division, Bangalore

3. Senior Supdt., of Post Offices,
West Division, Bangalore.

.. Respondents

(Shri MS Padmarajaiah .. Sr, Central Govt. Standing Counsel)

This application has come up today before this Tribunal for Orders. Hon'ble Vice Chairman made the following:

ORDER

As the questions raised in these cases are common we propose to dispose of them by a common Order.

2. All the applicants are retired postal employees. On their retirement, they have all been engaged as Short Duty Assistants (SDA) on hourly wage, on which, there is no dispute. The dispute, however, is confined to the additive element of Dearness Allowance (DA) in computing the hourly wage payable to the applicants and others similarly engaged, who are not pensioners but are termed as Reserve Trained Pool candidates (RTP) engaged on the same basis in the Department.

3. In determining the hourly wage in respect of SDAs, Govt. in its Order dated 25.3.1988 (Annexure A) had excluded the DA element as they were in receipt of DA on their pension. In terms of the aforesaid Order of Govt. recoveries have been effected or proposed to be effected from the applicants and therefore in challenging the same, they have sought for appropriate directions.

4. In justification of the order made on 25.3.1988, the respondents have filed their reply.

Shri M.R.Achar, learned counsel for the applicants, contends that the impugned order made by Government on 25.3.1988 excluding the DA element in computing the hourly wage payable to his clients who perform the very same duties as the RTPs, was discriminatory, irrational and violative of Article 14 of constitution.

Shri MS Padmarajaiah, learned Senior Central Govt. Standing counsel appearing for the respondents contends that the exclusion of the DA element in regard to the pensioners was a case of valid classification and not irrational at all.

7. The true scope and ambit of Articles 14 & 16 of the Constitution have been explained by the Supreme Court in a large number of cases.

In re-Special Courts Bills AIR 1978 SC 478 a Constitution Bench of 7 learned Judges reviewing all in the earlier cases have summarised and re-stated the principles. Bearing those principles stated by the Supreme Court we must ascertain whether the exclusion of DA element in regard to pensioners is valid or not.

8. The pensioners, who are already in receipt of DA on their pension and the RTPs who are not receipt of any other amounts, much less any DA belong to two separate and distinct classes. The nature of work performed by either of them, cannot be the sole and decisive factor to hold that they belong to one and the same class. In adjudging the charge of discrimination, we have therefore to examine the matter in depth and in its entirety. When their cases are examined in all their aspects, with due regard to the principles of classification, we cannot say that the Order of Govt., excluding the DA element in regard to pensioners, is violative of Articles 14 & 16 of the Constitution. On the contrary, we are of the view that the said Order of Govt., to that extent is valid.

9. Sri Achai next contends that in any event it was not open to Govt. to make its Order retrospective from 28.7.1986 and effect recoveries.

10. Shri Padmrajaiah sought to support the retrospectivity given in the Order of Government and recoveries in conformity with the same.

The order was made and issued by Govt on 25.3.1983 giving it retrospective effect however from 28.7.1986.

12. On the faith of the earlier orders made and the uniform rates fixed, the applicants have worked and drawn their wages.

13. Firstly it was not open to Govt. to give retrospectivity to its order. Even if Govt. had that power, then also on facts it was improper and unjust to give retrospectivity. On any view the

retrospectivity given from 28.7.1986 to 25.3.1988 is illegal, improper and unjust. We must therefore take exception to the order of Govt. to this extent and issue appropriate directions.

14. In the light of our above discussion, we make the following orders and directions:

i) We dismiss these applications in so far as they challenge the Govt. Order dated 25.3.1988 of fixing different hourly wage rates in regard to pensioners and non-pensioners.

ii) We declare that the fixation of different hourly wage rates for pensioners and non-pensioners will be effective from 25.3.1988 only and not for any period prior thereto.

iii) We direct the respondents to modulate all payments to the applicants on the basis of our above declaration.

15. Applications are disposed of in the above terms. But in the circumstances of the cases, we direct the parties to bear their own costs.

Sd/-

VICE CHAIRMAN

Sd/-

MEMBER(A)

TRUE COPY

bk.

12-2-487.

M. S. S.
DEPUTY REGISTRAR (JD) 137
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE

CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH

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

Review Application No.35/94 in

Dated: 4 APR 1995

APPLICATION NO. 10 and 674 and 735 of 1994.

APPLICANTS: Sri.R.Saravanam,

V/S.

RESPONDENTS: The Chief Post Master General, ~~Karnataka Circle~~,

To

1. Sri.R.Hari, Advocate,
No.4,Cambridge Rd,
First Cross,Ulsoor,
Bangalore-560 008.
2. Dr.M.S.Nagaraja, Advocate,
No.11,Second Floor,First Cross,
Sunjatha Complex,Gandhinagar,
Bangalore-560 009.
3. Sri.M.S.Padmarajaiah, Senior Central
Govt.Stng.Counsel, High Court Bldg,
Bangalore-560 001.

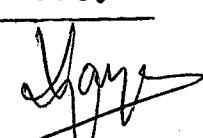
Subject:- Forwarding copies of the Orders passed by the
Central Administrative Tribunal, Bangalore-38.

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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 17-03-1995.

I send on

5/4/95


DEPUTY REGISTRAR
JUDICIAL BRANCHES.

gm*

CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH

REVIEW APPLICATION No.35/1994 IN

ORIGINAL APPLICATION Nos.10 & 674 & 735/94

FRIDAY, THIS THE 17TH DAY OF MARCH, 1994

SHRI JUSTICE P.K. SHYAMSUNDAR .. VICE CHAIRMAN

SHRI T.V. RAMANAN .. MEMBER (A)

Sri R. Saravanan,
aged 62 years,
Short Duty Clerk,
General Post Office,
Bangalore - 560 001 and 62 others

Review Applicants

(By Advocates Shri R. Hari and
Dr. M.S. Nagaraja)

vs.

The Chief Post Master General,
Karnataka Circle, Bangalore.

Respondent

(By Advocate Shri M.S. Padmaraiaiah,
Senior Central Govt. Stg. Counsel).

ORDER

Shri Justice P.K. Shyamsundar, Vice Chairman:

We have heard these applications in which we have made already an order rejecting the Review Applications. But, since a connected matter was pending, we thought we should in all fairness keep them brought up again to see whether they can still be regulated in the light of our views rendered while disposing off the Original Application by which, this Review application arose.

2. From the findings recorded therein, it treats the applicants in the O.A. who are also the review applicants, ~~as~~ not entitled to the same hourly wage rates as the non pensioners ~~will~~ entitled to. In the light of that finding, which is recorded after considering the pros and cons of the issue and also taking into account, the



judgment of the Madras Bench of the Tribunal in O.A. No.869/1988, we now find no reason to depart from the order we have already made dismissing the review applications.

3. We see there is a miscellaneous application filed by the review applicants with a plea for referring the matter to a full bench. We do not think it appropriate to refer this matter to a Full bench for the reason that in Madras, the order of that Bench has been implemented and we are told that to be contrary. Our views in the O.A. were really given credence to and the department has passed appropriate orders which, of-course, is not favourable to the applicants. But, that development, we do not think develops such a debacle which requires to be cleared off by a Full Bench. We have considered the decision of the Madras Bench and have dissented from that view holding the same to be per incuriam and we see no occasion for referring the matter to a Full Bench. Prayer for referring the matter to a Full Bench is rejected.

Scd
(T.V. RAMANAN)
MEMBER (A)

Scd
(P.K. SHYAMSUNDAR)
VICE CHAIRMAN

TRUE COPY

1047495
Section Officer
Central Administrative Tribunal
Bangalore Bench
Bangalore

