

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Second Floor,
Commercial Complex,
Indiranagar,
BANGALORE - 560 033.

Contempt Petition No.68 to 70/1994 in

Dated: **4 APR 1995**

APPLICATION NO. 556, 557, 562 of 1994.

APPLICANTS: Sri.Joshua John, and two others.,
V/S.

RESPONDENTS: Sri.M.Rajeshwaranath, Controller of Defence Accounts,
(R&D), Bangalore and another.

To

1. Sri.M.Narayana Swamy, Advocate,
No.844, Upstairs, 17th-G-Main,
Fifth Block, Rajajinagar,
Bangalore-560 010.
2. Sri.M.Vasudeva Rao, Addl.CGSC,
High Court Bldg, Bangalore-1.

*Received
Cops
clerk to Admstr
24/4/95*

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 27-03-1995.

*Issued on
5/4/95*

[Signature]
DEPUTY REGISTRAR
JUDICIAL BRANCHES.

CENTRAL ADMINISTRATIVE TRIBUNAL,
BANGALORE BENCH.

CONTEMPT PETITION (CIVIL) NO. 68 TO 70/ 1994

IN

ORIGINAL APPLICATION NO. 556, 557, 562/94

MONDAY, THE 27TH DAY OF MARCH, 1995

SHRI V. RAMAKRISHNAN ... MEMBER (A)

SHRI A.N. VUJJANARADHYA ... MEMBER (J)

1. Shri Joshua John,
Senior Scientific Asstt.,
A.D.E., C.V. Raman Nagar,
Bangalore - 93.

2. Shri Vadiraj V. Acharya,
Senior Scientific Asstt.,
ADE, C.V. Raman Nagar,
Bangalore - 93.

3. Shri S. Sandeep,
Senior Scientific Assistant,
ADE, C.V. Raman Nagar,
Bangalore - 93.

... Complainants

(By Advocate Shri M.N. Swamy)

Vs.

1. Shri M. Rajeshwarenath,
Controller of Defence Accounts
(R&D), C.V. Raman Nagar,
Bangalore-93.

2. Dr. K.G. Narayanan,
Director, ADE,
C.V. Raman Nagar,
Bangalore - 93.

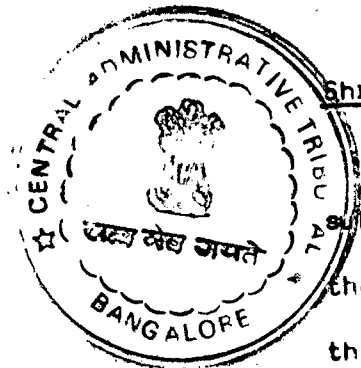
... Respondents

(By Addl. Central Govt. Standing Counsel,
Shri M.V. Rao)

ORDER

Shri V. Ramakrishnan, Member (A)

We have heard Shri M.V. Rao for the alleged contempters. He submits that the impugned order as at Annexure A-1 has been stayed by the Supreme Court. This position is admitted by Shri M.N. Swamy for the complainants. In view of the directions of the Supreme Court granting an interim stay of the impugned order, the contempt proceedings are dropped at present and the alleged contempters are discharged.



TRUE COPY

Section Officer

Central Administrative Tribunal
Bangalore Bench
Bangalore

(A.N. VUJJANARADHYA)
MEMBER (J)

(V. RAMAKRISHNAN)
MEMBER (A)

CENTRAL ADMINISTRATIVE TRIBUNAL : BANGALORE BENCH

APPLICATION NOS. 743/1993 &

551 to 578/1994

Am-A-I
(6)

DATED THIS THE TWENTIETH DAY OF APRIL, 1994.

Mr. Justice P.K. Shaysunder, Vice Chairman

Mr. T.V. Ramanan, Member (A)

1. Shri R. Pinto
S/o. Benjamin Pinto
Senior Scientific Asst.
A.D.E., C.V. Ramannagar
Bangalore-560 093.
2. Shri N.V. Nagaraj
Senior Scientific Assistant
A.D.E., C.V. Ramannagar
Bangalore - 93.
3. Shri P.K. Ghosh
Senior Scientific Assistant
A.D.E., C.V. Raman Nagar
Bangalore - 93.
4. Shri S. Ganapathy
S/o. Srinivasan
Senior Scientific Asstt.
A.D.E., C.V. Raman Nagar
Bangalore - 93.
5. Shri V.K. Raju
Senior Scientific Asst.,
A.D.E., C.V. Raman Nagar
Bangalore-93.
6. Janet Gideon
W/o. Dr. Gideon
Senior Scientific Asstt.
C.V. Raman nagar
Bangalore-93.
7. Joshua John
Senior Scientific Asstt.
A.D.E., C.V. Raman Nagar
Bangalore-93.
8. Vadiraj V. Acharya,
Senior Scientific Asstt.,
C.V. Raman Nagar
Bangalore-93.
9. Sanand Kumar
Senior Scientific Asstt.
C.V. Raman Nagar
Bangalore-93.
10. M. Jagannatha
Senior Scientific Asstt.
A.D.E., C.V. Raman Nagar
Bangalore-93.



11. Shri V.R. Subramanyam
S/o. S. Ranganathan
Senior Scientific Assistant
A.D.E., C.V. Raman Nagar
Bangalore - 93.
12. Shri M.K. Subramanyam
Senior Scientific Assistant
A.D.E., C.V. Raman Nagar
Bangalore-93.
13. Shri S. Sandeep
Senior Scientific Assistant
A.D.E., C.V. Raman Nagar
Bangalore-93.
14. Smt. K.G. Pankajam
Senior Scientific Assistant
A.D.E., C.V. Raman Nagar
Bangalore-93.
15. Sriletha Jayaram
Senior Scientific Assistant
A.D.E., C.V. Raman Nagar
Bangalore-93.
16. Shri T. Sridhar
Senior Scientific Assistant
A.D.E., C.V. Raman Nagar
Bangalore-93.
17. S. Geethanjali
W/o. N. Shankar
Senior Scientific Asst.
Bangalore-93.
18. Smt. P.V. Sathya Durgadevi
W/o. T. Basava Punnaiah
Senior Scientific Assistant
A.D.E., C.V. Raman Nagar
Bangalore-93.
19. Smt. M.R. Lakshmi
W/o. J.N. Prasad
Senior Scientific Assistant
A.D.E., C.V. Raman Nagar
Bangalore-93.
20. Smt. Swarnadevi H.S.,
W/o. T.S. Krishnamurthy
Senior Scientific Assistant
A.D.E.,
C.V. Raman Nagar
Bangalore-93.

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21. Shri C. Mani
S/o. Chokkalingam
Senior Scientific Assistant
A.D.E., C.V. Raman Nagar
Bangalore-93.
22. Shri K. padmanabha
S/o. Kodandaraman
Senior Scientific Assistant
A.D.E., C.V. Raman Nagar
Bangalore-93.
23. Smt. S. Jalajakshi
W/o. S. Srinivasan Murthy
Senior Scientific Assistant
A.D.E.,
C.V. Raman Nagar, Bangalore-93.
24. Hariharan
Major, Senior Scientific Assistant
A.D.E., C.V. Raman Nagar
Bangalore-93.
25. M. Sathya Mohan
Senior Scientific Assistant
A.D.E., C.V. Raman Nagar
Bangalore-93.
26. Shri A. Munikrishnaiah
Senior Scientific Assistant
A.D.E., C.V. Raman Nagar
Bangalore-93.
27. Shri S. Jayewardhini
Senior Scientific Assistant
A.D.E., C.V. Raman Nagar
Bangalore-93.
28. Smt. D. Vijayalakshmi
Senior Scientific Assistant
A.D.E., C.V. Raman Nagar
Bangalore-93.
29. Shri S. Ravisekar
Senior Scientific Assistant
A.D.E., C.V. Raman Nagar
Bangalore-93.

By
(Shri M.N. Swamy, Advocate)

..... Applicants

Vs.

1. The Controller
C.D.A.(R&D), C.V. Raman Nagar
Bangalore-560 093.
2. The Director
Aeronautical Development Establishment
C.V. Raman Nagar, Bangalore-93.

(By Shri M. V. Rao, A.G.S.C.)

..... Respondents



O R D E R

(Mr. T.V. Ramanan, Member (A))

In this case the applicants have approached this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 for relief as under:-

- (i) Declare by the issue of an appropriate order or direction as the case may be, the deductions made from the applicants from the arrears of pay and allowances granted to them consequent on implementation of the orders of this Hon'ble Tribunal in the batch of Appln. Nos. 458-500/1990 for adjusting towards the recovery of the over-time allowances and bonus drawn by them during the period between 1.1.1988 and 11.1.1993 as void and invalid, with a further direction directing the respondents to release the withheld amount to the applicants with interest to be determined by this Hon'ble Tribunal at the time of final hearing of the above applications, in the interest of justice and equity;
- (ii) pass such other orders just and expedient in the circumstances of the case including the award of costs, in the interest of justice and equity.

2. The facts of the case in brief are that Shri R. Pinto, applicant No.1, the remaining applicants No.2 to 29 and 14 more, who are not applicants herein, all employed as Senior Scientific Assistants in the Aeronautical Development Establishment, Bangalore, approached this Tribunal in Application nos. 458 to 500/1990 seeking relief for placement in the higher pay scale of Rs 2375-3500 made available by the Government for 822 posts of Senior Scientific Assistants working in various establishments, including the Aeronautical Development Establishment, under the DRDO with effect from 1.1.1988. It appears that the

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Aeronautical Development Establishment, Bangalore, operated the scheme of reservation for SC/ST by applying the roster and made available the higher scale of Senior Scientific Assistants to those belonging to SC/ST as a result of which Senior Scientific Assistants not belonging to SC/ST could not get ^{the higher scale} while their juniors got the same. Aggrieved by this action of the authorities of the Aeronautical Development Establishment, Bangalore, the applicants in Application nos. 458 to 500/1990 approached this Tribunal in June 1990. After due consideration, this Tribunal passed an ^{order on} 30.12.1991 giving the following directions:-

1. We hold that the application of the roster providing reservation for SC/ST to the placement of SSAs in the upgraded posts carrying higher pay scale is unwarranted and without authority of law.
2. We direct the respondents 1 to 3 to adhere to the seniority list prepared as per Annexure-C dated 7.3.1989 for placement of SSAs in the upgraded posts carrying higher pay scale on the basis of seniority subject to the rejection of the unfit from amongst SSAs with at least three years regular service in the grade.
3. The placement of respondents 4 to 25 in the upgraded posts in the higher pay scale is left undisturbed and those respondents need not be reverted on the ground that they came to be placed in the upgraded posts by wrong application of the roster prescribing reservation for SC/ST.
4. If any of the applicants have, since the date of filing of these applications, been placed in the upgraded posts with higher pay scale then placement in the upgraded posts shall be worked out from the date on which their immediate junior in the seniority list Annexure-C dated 7.3.1989 came to be placed and those applicants will be entitled to consequential benefits like higher pay scale from that date.
5. If the applicants have not since the date of filing these applications been placed in the upgraded posts with higher pay scale, respondents 1 to 3 shall consider the cases of the applicants for placement in the upgraded posts as per



(11)

direction No.2 given above. If the number of posts upgraded which are 822, fall short for accommodating these applicants for placement in the upgraded posts, respondents 1 to 3 shall upgrade sufficient number of more posts to accommodate the applicants herein if they are found fit for being placed in the upgraded posts carrying higher pay scale. The applicants on such placement in the upgraded posts shall be entitled to consequential benefits like higher pay scale with effect from the date their immediate junior in the seniority list as per Annexure-C came to be placed.

3. As a consequence of the directions given, the Government of India, Ministry of Defence, Department of Defence (R&D), New Delhi, addressed a letter dated 11th January, 1993 (Annexure-A) to the Director General, Defence Research and Development New Delhi for implementation of the judgement of this Tribunal. For the sake of convenience the said letter is reproduced below.

" No.16472/RD/FERS-1/139/D(R&D) dtd. 11th Jan.1993.

Sub: Placement of Senior Scientific Assistants
in the Higher pay scale of Rs 2375-3500.

Sir,

I am directed to convey the sanction of the president for placement of Senior Scientific Assistants as per Appendix in the grade of SSA from the date mentioned against their names with all consequential benefits including arrears of pay and allowances amounting to Rs 15,82,582/- (Rupees Fifteen Lakhs Eightytwo thousand Five Hundred Eightytwo only) in compliance with the Directions of Hon'ble Central Administrative Tribunal, Bangalore Bench vide judgement dated 30.12.1991 in Application Nos. 458 to 500/1990 (F) filed by Shri R. Pinto and Others.

2. Expenditure involved (charged) will be debited to Major Head 2076 (Army) Minor Head 108-sub Head 'B' (Pay & Allowances - Civilians Others) detailed code Head 1/366/02 of Defence Service Estimates.

3. This issues with the concurrence of Ministry of Defence (Finance) vide their O.M. No.95/D(IF/R&D) dated 8th Jan. 1993.

sd/-

(S.L. TRIPATHI)

Under Secretary to Govt. of India. "

(12)

Attached to this letter in the form of an Appendix is a list of 43 Senior Scientific Assistants of AOE, Bangalore, who were to be granted the higher pay scale of Rs 2375-3500 with retrospective effect. It is not disputed that all the aforesaid 43 applicants in Application Nos. 458 to 500/1990, out of whom 29 are applicants in the present application under consideration, were given the benefit of higher pay scale from various dates between 1.1.1988 and 28.6.1988 depending upon the dates of their eligibility for being given the higher scale. The applicants herein are aggrieved because while they were given the higher pay scale retrospectively which entailed grant of monetary benefits due to them, deductions were made from the arrears of payment due to them of various sums which constituted what they had received as overtime allowance and ad-hoc bonus between 1.1.1988 or between different dates thereafter upto 28.6.1988, as the case may be, and 11.1.1993. According to them until the letter dated 11.1.1993 was issued, they were eligible to put in overtime work and receive overtime allowance for such work and that they were also entitled to the payment of bonus. In fact all of them had put in overtime work between 1.1.1988 or between different dates thereafter upto 28.6.1988, as the case may be, and 11.1.1993 and received overtime allowance. Similarly, as they were entitled to payment of bonus they received that also during the period 1.1.1988 or between different dates thereafter upto 28.6.1988, as the case may be, and 11.1.1993. Their contention is that grant of the higher pay scale retrospectively between 1.1.1988 and 28.6.1988, as the case may be, cannot disentitle them from keeping the monies earned by them as overtime allowance and bonus prior to 11.1.1993, the date on which the letter (Annexure-A) was issued. Their further contention is that it is only after the issue of the letter (Annexure-A) that is, after 11.1.1993, that they became ineligible to receive overtime



(13)

allowance and also bonus since the higher pay received by each one of them in the higher scale disentitled them from receipt of overtime allowance and bonus. Hence, the reliefs sought by them in this application.

4. We have heard the learned counsel for the applicants and the learned Standing Counsel for the respondents and perused the record of the case. The one and only objection raised on behalf of the respondents is that the recovery of the overtime allowance and bonus paid to the applicants herein prior to 11.1.1993 was necessitated not because of any change in rules but because the applicants were not entitled to the same consequent on their placement in the higher scale from retrospective dates and admission of corresponding benefits. It is contended that whilst they were entitled to receipt of overtime allowance and bonus and received the sums previously, once the higher scale was allowed to them retrospectively from various dates, they became ineligible for the same with effect from those dates and hence the recovery of the overtime allowance and bonus paid to them with effect from the dates they ceased to be eligible is fully justified.

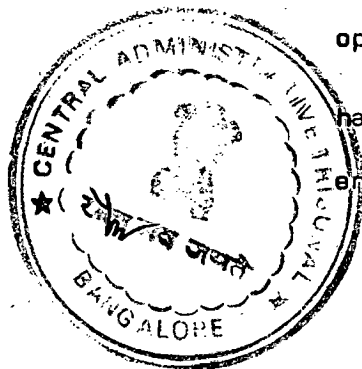
5. We do not find any substance in the arguments advanced by the learned Standing Counsel for the respondents. In the first place, the letter dated 11th January, 1993 (Annexure-A) does not provide for recovery of the monetary benefits which had accrued and paid to the applicants while they were serving as Senior Scientific Assistants in the lower scale. In fact, it is an admitted position that no orders had been issued to recover payments earlier received by the applicants as overtime allowance and bonus. The only evidence about deduction made of the overtime allowance and bonus paid earlier is in the form of

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(14)

pay slip for the month of April, 1993 in the name of S. Sandeep, applicant no.13, which stands presented along with the application herein as a sample document. This has not been disputed by the learned Standing Counsel. Arbitrary action was taken by R-2 by making deductions from the salary of the applicants. In State of Orissa Vs. Dr.(Miss.) Binapani Dei & Others, (1967) 2 SCR 625, the contention of the respondent in that case that her date of birth had arbitrarily been fixed by the State and on that basis the State had declared her superannuated before she attained the age of 58 years was considered by the High Court of Orissa. The High Court set aside the order of the State and State of Orissa appealed to the Supreme Court. Dismissing the appeal, Hon'ble Supreme Court made the following observation, which is relevant for our purpose herein:- "It is true that the order is administrative in character, but even an administrative order which involves civil consequences as already stated, must be made consistently with the rules of natural justice after informing the first respondent of the case of the State, the evidence in support thereof and after giving an opportunity to the first respondent of being heard and meeting or explaining the evidence."

It cannot be denied that the recovery of overtime allowance and bonus which had been paid to the applicants, who were entitled to the same prior to 11.1.1993, involves civil consequences. The applicants were never given notice of the intention of the organisation under which they are working about the recovery to be made consistent with the rules of natural justice and given an opportunity of being heard. This is so especially, because they had worked longer hours to earn overtime to which they were entitled at the relevant point of time by virtue of their holding



non-gazetted posts and their pay not exceeding Rs 2,200/-p.m.
By virtue of retrospective grant of the higher scale, work done by them as overtime work, which is defined in para 4(d) of the orders issued by the Ministry of Finance, Government of India, in their O.M. No.15011/2/E.II/(B)/76 dated 11th August, 1976 as amended upto 1st January, 1992 and as contained in Swamy's Compilation of Overtime Allowance of Central Government Employees - 14th Edition, as "work done in excess of one hour over the prescribed hours of work on any working day and includes work done on any Sunday or any other holiday," cannot be undone. That is, retrospective grant of pay scale cannot undo the extra work put in by the applicants as over time to which they were entitled and for which they were paid. Similarly, by virtue of their entitlement to payment of bonus, if they had received bonus for the relevant years when they had not been given the higher scale, grant of which put an end to their entitlement, whatever has been paid to them cannot be recovered. We, therefore, hold, ~~as the applicants have themselves contended,~~ that their entitlement to the payment of overtime allowance as also to bonus ceased with effect from 11.1.1993, the date on which the applicants were allowed higher grade of pay attached to the posts of Senior Scientist Assistant retrospectively.

6. In the result, this application is allowed except for the relief sought as regards payment of interest on the deducted/withheld amounts of the applicants. We direct the respondents to refund the recoveries they have made in relation to overtime allowance and bonus which the applicants had received between 1.1.1988 or between different dates thereafter

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upto 28.6.1988, as the case may be, and 11.1.1993.
This direction shall be complied with within a
period of 2 months from the date of receipt of a
copy of this order by Respondent-2. No order as to
costs.

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

Sdr
(P.K. SHYAMSUNDAR)
VICE CHAIRMAN

TRUE COPY

S. S. S. S. S.
SECTION OFFICER
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE



THIS IS THE TRUE COPY OF THE
DOCUMENT REFERRED TO AS
ANNEXURE A/1 IN THE APPLICATION
OF SRI/SM/.....
ADVOCATE FOR APPLICANT