

CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH

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

Dated: 2 JAN 1995

APPLICATION NO: 1163 of 1994.

APPLICANTS:- Sri.D.S.Kantharaja, Bangalore,  
V/S.

RESPONDENTS:- The Secretary, Ministry of Defence, N Delhi &  
three others.,

To

1. Sri.M.Narayanaswamy, Advocate, No.844, Upstairs,  
Fifth Block, Rajajinagar, Bangalore-560 010.
2. The Secretary, Ministry of Defence, Sena Bhavan,  
New Delhi-110 011.
3. The Scientific Advisor to Raksha Manthri and  
Director General, Research & Development Orgn.,  
Ministry of Defence, Sena Bhavan, New Delhi-11.
4. The Director, Aeronautical Development Establishment,  
C.V.Raman Nagar, Bangalore-560 093.
5. Sri M.Vasudeva Rao, Additional Central Government  
Standing Counsel, High Court Building, Bangalore-1.

Subject:- Forwarding of copies of the Order 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 21-12-1994.

Issued on  
03/01/95

of

  
for DEPUTY REGISTRAR  
JUDICIAL BRANCHES.

CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH

ORIGINAL APPLICATION No.1163/1994

WEDNESDAY, THIS THE 21ST DAY OF DECEMBER, 1994

SHRI JUSTICE P.K. SHYAMSUNDAR.. VICE CHAIRMAN

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

D.S. Kantharaja,  
S/o D.S. Sriramulu Setty,  
aged about 41 years,  
Appraiser, I.A.D. Customs Head Quarters,  
C.R. Building, Queen's Road,  
Bangalore - 560 001.

... Applicant

(By Advocate Shri M.N. Swamy)

Vs.

1. The Govt. of India,  
rep. by its secretary to Govt.,  
Ministry of Defence, Sena Bhavan,  
New Delhi - 110 011.

2. The Scientific Advisor to Raksha Mantri &  
Director General, Research & Development  
Organisation, Ministry of Defence,  
Sena Bhavan, New Delhi - 110 011.

3. The Director,  
Aeronautical Development Establishment,  
C.V. Raman Nagar, Bangalore-93.

4. The Collector of Customs,  
Office of the Collector of Customs,  
C.R. Building, Queen's Road,  
Bangalore-1.

... Respondents

(By Advocate Shri M. Vasudeva Rao,  
Addl. Central Govt. Stg. Counsel)

ORDER

Shri T.V. Ramanan, Member (A) :

Heard. Admit.

2. The applicant, who was, prior to 29.5.1989, working as a Senior Scientific Assistant in the Aeronautical Development Establishment (ADE), Bangalore, and who is presently with the Customs Department as an Appraiser, claims that the higher scale



of pay, i.e., 2375-3500/- allowed to Senior Scientific Assistants with effect from 1.1.1988 should have been granted to him as he was functioning as a Senior Scientific Assistant as on 1.1.1988 in the A.D.E. though subsequently, he had applied for the post of Customs Appraiser under the direct recruitment quota, got selected for that post, left the A.D.E. and joined the Customs Department with effect from 31.5.1989. He is also claiming that in the case of Shri R. Pinto Vs. Union of India & Others in O.A. No.458 to 500/90, Shri Pinto, who was junior to him in service as a Senior Scientific Assistant was allowed the higher pay scale of Rs.2375-3500/- with effect from 1.1.1988. The Additional Standing Counsel for respondents No.1 to 3, argued that no doubt the applicant was entitled to be considered for grant of higher pay scale mentioned supra from 1.1.1988 in the A.D.E., but, in actuality, the DPC which did consider his case along with the cases of others did not find him fit for being granted the higher pay scale. That was the only reason why the applicant could not be granted the higher pay scale with effect from 1.1.1988.

3. Learned counsel for the applicant drew out attention to para 6 of the written statement filed by the respondents which reads as follows:

"The case of the applicant for grant of higher pay scale was considered by a duly constituted Departmental Selection Committee on 17 Sep 1990 but on the basis of his record of service as reflected in his ACRs for the 1987, 1988 & 1989 the committee assessed him 'Not yet fit' for grant of higher pay scale."

According to him, as the applicant became entitled to the higher pay scale from 1.1.1988, when the Departmental Selection Committee considered his case on 17.9.1990, ~~they~~ <sup>Committee</sup> should not have gone by the Annual Confidential Reports (ACRs) of the applicant for the years 1988 and 1989, because the date of reckoning for the grant of higher pay scale happened to be 1.1.1988. It would have been more appropriate

he averred, if the Selection Committee had gone by the ACRs of the applicant for the previous three years excluding the year 1988. His argument is convincing because if a Govt. servant were to be given a certain benefit with effect from a particular date retrospectively and such benefit can be given only if he is found fit by a duly constituted Selection Committee on a later date, then the ACRs relevant to the Govt. servant for the years upto the year on which the Govt. servant would be considered should alone be reckoned. It would be wrong if the ACRs relating to a period subsequent to the cut-off date were to be considered for granting him the benefit in question. In view of this and as it is not disputed that the applicant is senior to Shri R. Pinto, which is further evident from the proceedings of the DPC which met on the 17th September, 1990, shown to us, the Selection Committee should not have considered the case of the applicant for grant of the higher scale on the basis of his Annual Confidential Reports for the years 1988 and 1989. It would have been appropriate if the selection committee had taken into account the performance as reflected from the ACRs of the previous three years, viz., 1985, 1986 and 1987. We are not aware what made the Selection Committee to declare the applicant as unfit. Apparently, it is evident from the proceedings that that conclusion was based on the performance of the applicant as reflected in certain ACRs. Although, the years to which the ACRs related have not been mentioned in the proceedings of the selection committee, the respondents have very clearly stated in para 6 of the written statement referred to supra that the ACRs for the years 1987, 1988 and 1989 were taken into consideration in arriving at the finding that the applicant was not fit to be allowed the higher pay scale.

4. For the reasons stated above, we cannot uphold the DPC recommendations and its acceptance by the respondents concerned that the applicant was not fit for grant of higher pay scale because the basis, apparently, was on the ACRs of 1987, 1988 and 1989. Hence, we allow this application and quash Annexure-A4. We direct the respondents 1 to 3 to consider the case of the applicant for being given the higher pay scale with effect from 1.1.1988 on the basis of the three ACRs of the applicant which were available upto the period ending 31.12.1987. This exercise may be completed within a period of three months from the date of receipt of a copy of this order by respondents 1 to 3. No orders as to costs.

Sd-

( T. V. RAMANAN )  
MEMBER (A)



Sd-

(P.K.SHYAMSUNDAR)  
VICE CHAIRMAN

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*Sh. Ramdas*  
Section Officer  
Central Administrative Tribunal  
Bangalore Bench  
Bangalore

21/1/95

CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH

B-767

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

Contempt Petition No. 108 of 1995 in Dated: 7 FEB 1996

Application No. 1163 of 1994.

Applicant(s) : D.S. Kantharaj,  
V/s.

Respondents : Sri. Nambiar, Secretary, M/o. Defence, New Delhi  
and others.,

To

1. Sri. M. Narayanaswamy, Advocate,  
No. 844, Upstairs, Fifth Block,  
17th-G-Main, Rajajinagar,  
Bangalore-560 010.

2. Sri. M. Vasudeva Rao, Addl. CGSC,  
High Court Bldg, Bangalore-1.

Subject:- Forwarding of copies of the Orders passed by  
Central Administrative Tribunal, Bangalore-30  
-x-x-x-

A copy of the Order/Stay Order/Interim Order,  
passed by this Tribunal in the above mentioned application(s)  
is enclosed for information and further necessary action.  
The Order was pronounced on 01-02-1996.

*Chayy*  
For Deputy Registrar  
Judicial Branches.

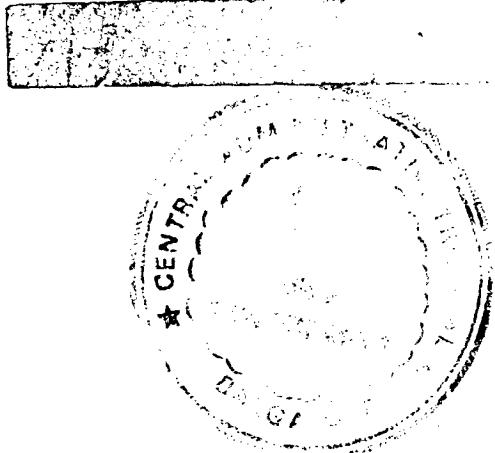
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In the Central Administrative Tribunal  
Bangalore Bench  
Bangalore

Contempt Petition Application No. 108 of 1995 in

ORDER SHEET (Contd.)  
O/A No. 1163/94

Date	Office Notes	Orders of Tribunal
		<p><u>PKS (VC) / VR (MA)</u> 1.2.96</p> <p>Applicant's counseel Shri M.N. Surya appearing through Shri M. Madhusudhan, has admitted that the directions of this Tribunal has been complied with.</p> <p>In that view of the matter, this contempt proceedings are dropped.</p>



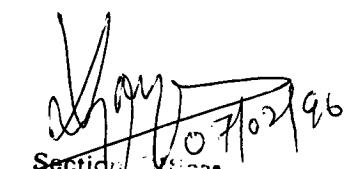
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MEMBER (A)

VICE CHAIRMAN

  
Section Officer  
Central Administrative Tribunal  
Bangalore Bench  
Bangalore  
10/02/96