

CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH

Second Floor,
Commercial Complex,
Indiranagar,
BANGALORE - 560 030.

Dated: **6 APR 1995**

APPLICATION NO. 915 of 1994.

APPLICANTS: **Sri.C.M.Hiremath, Bijapur**

V/S.

RESPONDENTS: **Head of Deptt. Telecom Deptt. New Delhi, and
three others.,**

To

1. **Sri.P.A.Kulkarni, Advocate, No.47, Second Floor,
Fifty Seventh-A-Cross, Fourth Block, Rajajinagar,
Bangalore-56 0010**
2. **Sri.M.Vasudeva Rao, Additional Central
govt. Stndg. Counsel, High Court Bldg,
Bangalore-560 001.**

*one copy Received
on 7/4/95
by B. Kulkarni
for P.A.K.*

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 29-03-1995.

*Issued on
6/4/95*

[Signature]
DEPUTY REGISTRAR
JUDICIAL BRANCHES.

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BANGALORE

ORIGINAL APPLICATION NO.915/1994

WEDNESDAY THIS THE TWENTY NINTH DAY OF MARCH 1995

MR. V. RAMAKRISHNAN

MEMBER (A)

MR. A.N. VUJJANARADHAYA

MEMBER (J)

Shri C.M. Hiremath,
Telecom Office Assistant,
O/o Assistant Engineer Cables,
Bijapur under Telecom District
Engineer, Bijapur

Applicant

(By Advocate Shri P.A. Kulkarni)

v.

1. Department of Telecom,
by its Head of the Deptt.,
No.20, Ashoka Road,
Sanchar Bhavan,
New Delhi - 110 001
2. Chief General Manager Telecom,
Karnataka Circle
No.1, Old Madras Road,
Ulsoor,
Bangalore - 560 008
3. Chief General Manager
Mahanagar Telephone Nioam Ltd.,
MTNL, Prabhadevi Telephone House,
Dadar,
Bombay - 400 028
4. Telecom District Engineer,
Bijapur District,
Bijapur

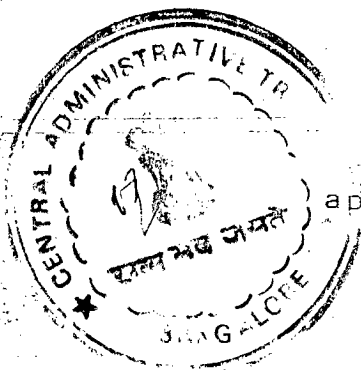
Respondents

(By learned Standing Counsel)
Shri M.V. Rao

ORDER

MR. V. RAMAKRISHNAN, MEMBER (A)

We have heard Shri P.A. Kulkarni for the
applicant and Shri M.V. Rao for the ^{respondent} Department.



2. The applicant herein who was functioning as U.D.C. in Bombay Telephones was transferred at his own request to the post of TOA in Bijapur in Karnataka Circle under Rule 38 of the P&T Manuals Vol.4. He has prayed for a direction to the department that the last pay drawn by him as U.D.C. in Bombay Telephones should be protected while fixing his pay in the lower scale on his reporting at Bijapur and has challenged the stand of the Department as contained in the letter dated 18.3.94 and communicated to the applicant on 6.4.94 as at Annexure A-3 where his pay was brought down to a lower level on the relevant date.

3. Shri P.A. Kulkarni, learned counsel for the applicant contends that even though the applicant had joined in a post which carries a lower scale of pay, he is entitled under the relevant rules to protection of pay drawn by him as U.D.C. in Bombay Telephones and the same is to be done by fixing his pay at the appropriate stage in the lower scale. In this connection, he draws our attention to the Government of India's decision No.9 under FR 22 - Swamy's Compilation of FRSR - 10th Edition which incorporates the decision of the Department of Personnel and Training O.M. dated 22.5.89. As per this O.M., when a person is appointed to a post which does not involve assumption of duties and responsibilities of greater importance than those attached to a post already held by him, he will

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draw his initial pay the stage of time scale of the new post which is equal to his pay in respect of old post. The counsel further says that this O.M. has taken effect from 1st of January, 1986, as laid down in para 4 of that O.M. The applicant herein was transferred from Bombay to Bijapur on 3.3.87 and reported for duty at Bijapur on 4.5.87. In view of this, Shri Kulkarni contends that his case is fully covered under the provisions of OM referred to supra.

4. The Department, however, has taken the view that on his appointment to a post carrying lower scale his pay has to be fixed by granting him increments for each completed years of service in the higher post. On this basis, his pay has been fixed in 1987 at Rs.1075 + PP 15 as against the pay of Rs.1260/- drawn by him as U.D.C. in the Bombay Telephones. For such fixation, the Department has relied on the Government of India's decision No.5 below FR 27 which delegates certain additional powers to the Ministries etc. for fixation of pay of Government servant and which incorporates the Ministry of Finance OM dated 22.6.62. Annexure to Government of India's decision No.5 below FR 27 Sr.No.1 regulates the pay of temporary government servants on transfer from a higher to a lower scale and in such cases the pay has to be fixed by granting increments for each completed year of service. In the same Annexure Sr.No.2(a) deals with fixation of pay of quasi permanent servants appointed to officiate



in other posts and in such cases, the pay has to be regulated as if the pay drawn is substantive that is in such cases pay last drawn has to be protected.

5. We have gone through the relevant rules and instructions. We find that the Department has not taken note of the Department of Personnel O.M. dated 22.5.89 shown as Government of India's decision No.9 below FR 22 but have gone on the basis of Finance Ministry's O.M. dated 22.6.62. ¹⁷~~Here~~ Again, they have not kept in view the fact that the applicant is a regular government employee and has been functioning as U.D.C. on a regular basis until he was shifted to Bijapur at his own request. The Department of Personnel O.M. dated 22.5.89 which has ^{since} been incorporated as FR 22(1)(a)(ii) makes a distinction between transfer to a post involving assumption of higher duties and responsibilities and transfer to a post not involving such assumption. We are of the view that the Department should have fixed the pay of the applicant in terms of Rule 22(1)(a)(ii) corresponding to the provisions contained in the Department of Personnel OM dated 22.5.89. In other words his pay in the scale of TOA should be fixed at the same stage as he was drawing as UDC in Bombay Telephone prior to his transfer to Bijapur. This will mean that the pay last drawn by him as UDC on a regular basis in Bombay Telephones will be protected in the lower scale of TOA on his appointment at Bijapur. We direct the Department to fix his pay accordingly

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and grant him consequential benefits. We quash ¹⁸
the Department's letter dated 18.3.94 and
communicated to the applicant on 6.4.94 as at
Annexure A-3.

6. The Department will re-do the fixation
of the pay of the applicant and grant of
consequential benefits in terms of the above
direction within three months from the date of
receipt of a copy of this order. No costs.

Sd/-

29/3/95

MEMBER (J)

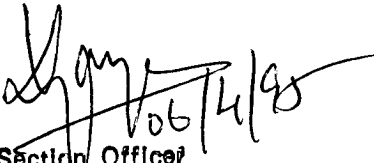
Sd/-

Nr 29/3/95

MEMBER (A)



TRUE COPY




Section Officer
Central Administrative Tribunal
Bangalore Bench
Bangalore

In the Central Administrative Tribunal
Bangalore Bench
Bangalore

Application No. 915 of 199 5

ORDER SHEET (Contd.)

Sri. C.M. Hiremath, Bijapur vs. HOD of Telecom, New Delhi & 3005.

Date	Office Notes	Orders of Tribunal
		<p><u>GR(MA)</u> 20-10-1995 <u>M.A.No.434/95 in O.A.915/94</u></p> <p>Heard Shri.M.V.Rao on M.A.434/95. The judgement of the Tribunal in O.A.915/94 was rendered on 29-3-1995. The grounds in support of the MA are not convincing at all as the department has not stated as to why they could not take effective steps. ^{so} hereby MA 434/95 is rejected.</p> <p>Sd M(A)</p> <p>TRUE COPY  Section Officer Central Administrative Tribunal Bangalore Bench Bangalore</p> 

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

Contempt Petition No. 5/96 in Dated: **11 MAR 1996**

Application No. 915 of 1994

Applicant(s) : Sri C.M. Hiremath,
V/s.

Respondents : Sri. Takkar, Director General,
Telecom Deptt, New Delhi & Others.


To

1. Sri P.A. Kulkarni,
Advocate, No. 47,
2nd floor, 57-A Cross,
4th Block, Rajajinagar
BANGALORE-10

2. Sri M. Vasudera Rao,
Addl. C.G.S.C.,
High Court Bldg,
BANGALORE-1

Subject:- Forwarding of copies of the Orders passed by
Central Administrative Tribunal, Bangalore-33
-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- 07-03-96


Deputy Registrar
Judicial Branches.

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BANGALORE

CONTEMPT PETITION NO.5/1996 IN
O.A.NO.915/94

THURSDAY THIS THE SEVENTH DAY OF MARCH, 1996

MR. T.V. RAMANAN

MEMBER (A)

Shri C.M. Hiremath,
aged about 39 years,
Occn: Telecom Office Assistant,
O/o Assistant Engineer Cables,
Bijapur
Under Telecom District Engineer,
Bijapur - 586101

Petitioner/
complainant

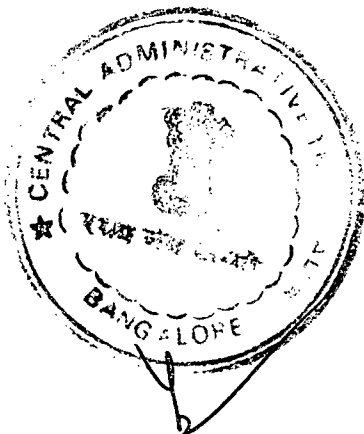
(By Advocate Shri P.A. Kulkarni)

v.

1. Shri Takkar,
Director General,
Department of Telecommunications,
No.20, Ashoka Road,
Sanchar Bhavan,
New Delhi - 110001
2. R. Ranganathan,
Chief General Manager Telecom,
Karnataka Circle,
No.1, Old Madras Road,
Ulsoor, Bangalore-560008
3. Shri A.R. Sohoni,
Mahanagar Telephone Nigam Ltd(MTNL),
Prabhadevi Telephone House,
Dadar,
Bombay - 400 028
4. P.G. Devorkar,
Telecom District Engineer,
Bijapur District,
Bijapur-586101

Respondents/
Accused

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



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

Shri M.V. Rao, Addl. Central Government Standing Counsel files statement of objections in which it is stated that the respondents have complied with the directions of this Tribunal. Shri Rao further adds that the pay fixation of the petitioner herein has been done by the Department and the arrears amounting to Rs.34,146/- has already been paid to him. Shri P.A. Kulkarni, learned counsel for the petitioner does not deny that the petitioner's pay has been fixed and the arrears also paid. In this view of the matter, this contempt petition becomes infructuous and accordingly further proceedings are dropped.



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(T.V. RAMANAN)
MEMBER (A)

[Signature] 11/3/96
Deputy Registrar
Central Administrative Tribunal
Bangalore Bench, Bangalore