

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

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

Dated: **1 FEB 1995**

APPLICATION NO: 1355/94 and 1581 of 1994.

APPLICANTS:- Sri.H.K.Nagareja and Sri.S.V.Anantharamaiah,
V/S.

RESPONDENTS:- The Secretary, Ministry of Defence, New Delhi
and two others.,

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1. Dr.M.S.Nagareja, Advocate,
No.11, Secod Floor, 1st Cross,
Sujatha Complex, Gandhinagar,
Bangalore-560089.
2. Sri.G.Shanthappa, Addl.C.G.S.C.
High Court Bldg, 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 23rd January, 1995.

Issued on
01/02/95
[Signature]

o/c

[Signature]
for DEPUTY REGISTRAR
JUDICIAL BRANCHES.

CENTRAL ADMINISTRATIVE TRIBUNAL,
BANGALORE BENCH.

ORIGINAL APPLICATION NO. 1355/94 & 1581/94

MONDAY, THE 23RD DAY OF JANUARY, 1995

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

1. Shri H.K. Nagaraja,
Aged 58 years,
S/o Shri H. Krishnappa,
22, Old Bank Colony,
Konankunte,
Bangalore - 560 062.
 2. Shri S.V. Anantharamaiah,
aged 58 years,
S/o Shri S. Venkataramaiah,
MF-19/11, Canara Bank Apartments,
BTM Layout,
Bangalore - 560 076.
- ... Applicants

(By Advocate Dr. M.S. Nagaraja)

Vs.

1. Union of India,
represented by
Secretary to Government,
Ministry of Defence,
Government of India,
New Delhi.
 2. The Engineer in Chief,
Army Headquarters,
Ministry of Defence,
Kashmir House,
New Delhi - 110 011.
 3. The Controller General of
Defence Accounts,
Government of India,
R.K. Puram,
New Delhi - 110 060.
- ... Respondents

(By Addl. Central Govt. Standing Counsel,
Shri G. Shanthappa)



ORDER

Shri V. Ramakrishnan, Member (A)

The applicants herein are aggrieved by the fact that on their promotion to the level of Chief Engineer carrying a pay scale of Rs. 5900 - 6700, the special pay of Rs. 400/- drawn by them as Additional Chief Engineer has not been reckoned for fixation of their pay in Chief Engineer's scale. The applicants joined service in the Military Engineering Service in 1960 and 1963 respectively. In due course they were promoted as Superintending Engineer. From that level they were promoted as Additional Chief Engineer with effect from 10.11.88 in respect of the first applicant and 16.11.88 in respect of the second applicant. They were further promoted as Chief Engineer with effect from 8.10.93 and 27.10.93 respectively. As additional Chief Engineer, they were drawing a pay of Rs. 5500/- plus Rs. 400/- from 1988 till their promotion as Chief Engineer in 1993.

(S.G.)
2. The post of Superintending Engineer carries a pay scale of Rs. 4500 - 5700. The immediate higher level over that of Superintending Engineer is that of Additional Chief Engineer which carries the same pay scale as that of Superintending Engineer but with a special pay of Rs. 400/-. The post of Chief Engineer carries a pay scale of Rs. 5900 - 6700. The applicants' contention is that as the post of Additional Chief Engineer carries higher responsibilities as compared to that of Superintending Engineer, this special pay of Rs. 400/- is obviously granted in lieu of higher pay scale and this special pay should have been taken into account in terms of Government of India, Ministry of Finance OM dated 25.2.65 which inter alia states as follows:

...3/-

"(a) When the special pay is in lieu of a separate higher scale - In cases where a Government servant is in receipt of a special pay in a post, his pay on promotion to a higher post may be fixed after taking into account the special pay drawn in the lower post subject to the conditions mentioned below -

- (i) The special pay in the lower post should have been granted in lieu of separate higher scale (e.g., special pay granted to steno-typist, clerk-in-charge, etc.);
- (ii) If the special pay has been drawn in the lower post continuously for a minimum period of three years on the date of promotion, the pay in the higher post will be fixed, under the normal rules, treating the special pay as part of basic pay. In other cases, the pay in the time-scale or the higher post will be fixed, under the normal rules, with reference to the basic pay drawn in the lower post (excluding the special pay); where this results in drop in emoluments the difference between the pay so fixed and the pay plus special pay drawn in the lower post will be allowed in the form of personal pay to be absorbed in future increases of pay;
- (iii) In both the kinds of cases referred to in clause (ii) above, it should be certified that, but for the promotion, the Government servant would have continued to draw the special pay in the lower post."

They contend that as they had been holding the post of Additional Chief Engineer for about 5 years and drawing special pay of Rs. 400/- during that time and they would have obviously continued as Additional Chief Engineer but for their promotion as Chief Engineer, the instructions referred to supra is directly applicable to them and their special pay should have been reckoned while fixing their pay on promotion as Chief Engineer.

3. The Respondents controvert this position. They submit that the special pay of Rs. 400/- is not to be taken into account for fixation of pay of the applicants in the rank of Chief Engineer. They also state that special pay is not pay as per the definition as contained

in FR 9 (21) (a) (i). FR 9 (21) (a) states as follows:

....4/-



"(a) Pay means the amount drawn monthly by a Government servant as -

- (i) the pay, other than special pay or pay granted in view of his personal qualifications, which has been sanctioned for a post held by him substantively or in an officiating capacity, or to which he is entitled by reason of his position in a cadre; and
- (ii) overseas pay, special pay and personal pay; and
- (iii) any other emoluments which may be specially classed as pay by the President."

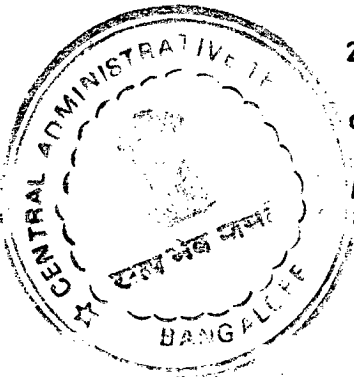
While referring to FR 9(21) (a) (i), the respondents seem to have overlooked FR 9 (21) (a) (ii). As such the department's argument that pay does not include special pay is without substance.

The respondents in their reply statement have also questioned the jurisdiction of the Tribunal to entertain the present application in para 6 and 7. Shri Shanthappa, learned Standing Counsel submits during the hearing that the Tribunal has jurisdiction to hear the present application. We are surprised to see that the reply has been drafted so casually and in an unsuitable language. We expect that the department will exercise greater care in future in such matters.

We notice that the Accounts Officer has taken the view in the Memorandum dated 15.12.93 as at Annexure A-6 that the special pay of Rs. 400/- to Additional Chief Engineers of MES has been sanctioned over and above pay of the grade of SE/ SE (SG) and not in lieu of separate higher pay scale for Additional Chief Engineer vide DG letter dated 30.5.88. The letter dated 30.5.88 referred to by the Accounts Officer is at Annexure A-3 to the application. This conveys the sanction of the President allowing a special pay of Rs. 400/- to Additional Chief Engineers of Military Engineering Service

over and above the pay of the grade of SE/ SE (SG). It goes on to say that the Additional Chief Engineers working in E-in-C's Branch will not be eligible for "HQ Special Pay" in addition to this Special Pay. Dr. Nagaraja submits that the present applicants were not working at the headquarters and they were not drawing any HQ Special Pay but were drawing special pay of Rs. 400/- attached to the post of Additional Chief Engineer over and above the scale of Superintending Engineer. (S.G.)

5. Keeping in view the fact that the ^{higher} post of Additional Chief Engineer does not carry any separate scale but carries the same scale of Superintending Engineer (S.G.) with a special pay of Rs. 400/- attached to it, this special pay should have been taken to be in lieu of the higher pay scale. As the applicants also had drawn the special pay of Rs. 400/- for more than three years and as the instructions dated 25.2.65 are admittedly current even at present (as is seen from para 2 of the Chief Engineer, Headquarters letter dated 4.1.94 as at Annexure A-7), the applicants are entitled to reckon the special pay of Rs. 400/- for the purpose of fixation of pay on promotion to the level of Chief Engineer. Respondents are accordingly directed to take action to fix the pay of the applicants on their promotion to the level of Chief Engineer by reckoning the special pay drawn by them as Additional Chief Engineer and extend to them all the consequential benefits flowing therefrom such as arrears and revision in retiral benefits as the applicants have since retired from service. This should be done within three months from the date of receipt of a copy of this order. No costs.



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Section Officer
Central Administrative Tribunal
Bangalore Bench
Bangalore

(A.N. WUJJANARADHYA)
MEMBER (J)

(V. RAMAKRISHNAN)
MEMBER (A)

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

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

Miscellaneous Applications No.242 and
243 of 1995 in

Dated: 31 MAY 1995

APPLICATION NO. 1355 of 1994 and 1581 of 1994.

APPLICANTS: Sri.H.K.Nagaraja and Sri.S.V.Anantharamaiah.
V/S.

RESPONDENTS: The Secretary, Ministry of Defence,
New Delhi and two others.,

To

1. Dr.M.S.Nagaraja, Advocate, No.11,
Second Floor, First Cross,
Sujatha Complex, Gandhinagar,
Bangalore-9.
2. Sri.G.Shanthappa, Additional Central
Govt.Standing 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 30th May, 1995.

Issued on
31/5/95


DEPUTY REGISTRAR
JUDICIAL BRANCHES.


In the Central Administrative Tribunal
Bangalore Bench
Bangalore

MA 242/95 for condonation of delay
MA 243/95 for extension of time.

in O. Application No. 1355 of 1994 & 1581/94.

ORDER SHEET (Contd.)

Date	Office Notes	Orders of Tribunal
4		<p>VR (MA) 30.5.95</p> <p>Heard Shri G. Shantappa on MA 242/95 as also on 243/95. MA 242/95 is allowed and the delay condoned. As regards MA 243/95, it is not clear as to why the department needs 3 more months time to comply with the order. The reason given in paras 2, 3 & 4^{MA} are not entirely convincing as details of pay including special pay drawn by the applicant should be readily available with the local office. The statement made that the Engineering Chief in New Delhi has not responded to various requests from Chief Engineer is surprising when the Engineering Chief as also the Ministry were parties to the main OA. In the light of the position brought out above, I feel no justification to extend time for 3 months from 5.5.95. The dept. should comply with the orders before 15.6.95, failing which the applicant will be entitled interest at the rate of 12% on the additional amount due to him, with effect from that date. <i>u.p.</i></p>

Date	Office Notes	Orders of Tribunal
		<p>the above, ^{disposal} MA 243/95 is disposed.</p> <p>Sd- M(A)</p> <p>TRUE COPY</p> <p><i>[Signature]</i> 31/5/95</p> <p>Section Officer Central Administrative Tribunal Bangalore Bench Bangalore</p>

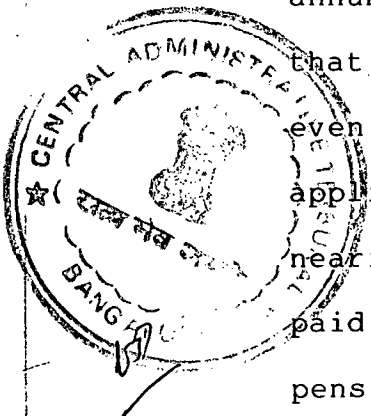
CENTRAL ADMINISTRATIVE TRIBUNAL,
BANGALORE BENCH, BANGALORE.

OA NO. 1355/94 & 1581/94

VR (MA)
23.8.95.

ORDERS ON MA 356/95

Heard Shri G. Shanthappa on MA 356/95 which is a prayer for waiver of interest. The Tribunal by its order dated 23.1.95 had directed the respondents to fix the pay of the applicants on their promotion to the level of Chief Engineer by reckoning the special pay drawn by them as Additional Chief Engineer and extend to them all the consequential benefits. This ^{was} to be done within three months from the date of receipt of a copy of that order. The period of three months expired on 30.4.95. The department had approached the Tribunal by MA 243/95 dated 17.5.95 praying for further extension of time on the ground that the Engineer-in-Chief in New Delhi has not responded to various requests. This MA was disposed of by an order dated 30.5.95 extending the time only upto 15.6.95 and with a further direction that if the compliance was not effected by 15.6.95, the applicants will be entitled to get interest @ 12% per annum on the additional amount due to them with effect from that date, i.e. 15.6.95. In the present MA it is seen that even the principal amount has not been paid to the applicants. Shri Shanthappa submits that the process is nearing completion and the amount in respect of pay would be paid to the applicants soon but as regards the revised pension and gratuity, it will take three to four months.



Shri Shanthappa submits that the department had been acting with due expedition in settling the case and they should not be mulcted with interest with effect from 15.6.95.

2. I do not find that the reasons given by the respondents for delay in complying with the directions of the Tribunal to be satisfactory. As brought out earlier, the Engineer-in-Chief was also a respondent in the main application and he should have taken steps as soon as his office got a copy of the judgement. The respondents were given three months time and subsequently they got it extended by more than six weeks. The submission in the MA that there are no rules available to pay interest @ 12% on the amount to be payable to the public servants is not relevant as it is the bounden duty of the department to comply with the directions of the Tribunal. The department obviously has not acted with the requisite promptness particularly in paying the arrears in respect of salary and gratuity as the calculation should not have been taken so much time.

3. In the circumstances of the case, the MA is disposed of with the following directions:

(1) The department should pay interest @ 12% per annum with effect from 15.6.95 in respect of arrears of pay and gratuity due to the applicants till the date of payment.

(2) As regards the revised pension, it is the submission of Shri Shanthappa that the department needs some more time to calculate the revised pension. In view of this, the department should pay the revised pension including its arrears before 15.9.95 failing which they will have to pay interest @ 12% on such arrears on account of revised pension ^{from 15.9.95} till the date of payment.



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23/12/95
Member (A)

Section Officer
Central Administrative Tribunal
Bangalore Bench
Bangalore