

CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH: BANGALORE

APPLICATION NO.2090/1994

WEDNESDAY, THE 9TH DAY OF AUGUST, 1995

MR.JUSTICE P.K.SHYAMSUNDAR

...VICE CHAIRMAN

MR.T.V.RAMANAN

...MEMBER(A)

R.S.CHOPRA
IPS (Retd)
No.68. MCHS,
16th Main BTM Layout,
BANGALORE 560 076.

(By Advocate Shri.Mahesh R.Uppin)

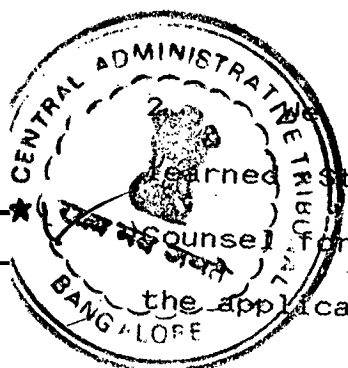
Vs.

1. The State of Karnataka,
by its Chief Secretary,
Vidhana Soudha,
BANGALORE- 560 001.
2. The Accountant General,
Karnataka, Vidhana Veedhi Road,
BANGALORE.
3. The Union of India,
by its Secretary,
Ministry of Home Affairs,
NEW DELHI. .. Respondents.
(By Shri.B.B. Mandappa, State Govt. Advocate
for R-1 & Shri M.S. Padmarajaiah, S.C.G.S.C.
for R-2 &3)

| O R D E R |

MR. JUSTICE P.K. SHYAMSUNDAR, VICE CHAIRMAN:

This case was dismissed for non-prosecution on 8-6-1995. We have restored this application today and proceed to dispose of the same treating it as posted today for final hearing.



have heard the learned counsel for the applicant, learned State Government Advocate and learned Standing Counsel for the Union of India. In this application wherein the applicant is an I.P.S. officer who had retired at the

contd...2/-

level of a Director General of Police (DGP for short) without the benefit of the salary of a DGP, commanding a pay scale of Rs.7600-8000. His point is that for no fault of his he had been denied the higher pay scale of Rs.7600-8000 although he had worked on posts equivalent to that of a DGP. By the order dated 24-10-1991 (Annexure A1) issued by the State Government of Karnataka he was promoted as DGP in the aforesaid scale of pay and appointed as Commandant General, Home Guards and Ex-officio Director and Director of Fireforce, Bangalore. He assumed charge of this office and discharged the duties and responsibilities of that post at the level of DGP between 31-10-1991 and 1-8-1992. It appears that subsequently he was transferred and posted as Chairman and Managing Director of the Karnataka State Police Housing Corporation which post he held with effect from 1-8-1982 till he retired from service on 31-12-1993. This, of course, made no difference because the post of the Police Housing Corporation Chief was also in the rank of DGP commanding the same pay scale of Rs.7600-8000. The fact remains the officer did not get the higher pay scale of Rs.7600-8000 and when he finally left Government service on his retirement on 31-12-1993 he left without getting the pay of the DGP despite representations made, as could be seen from Annexures-A2 and A3 and counsel tells us there are many more. We have taken notice of the fact that the officer had not simply remained quiescent when he did not draw the salary of the DGP although he assumed higher office following his appointment as such. He did make representations urging that he be paid the higher salary due to a DGP.

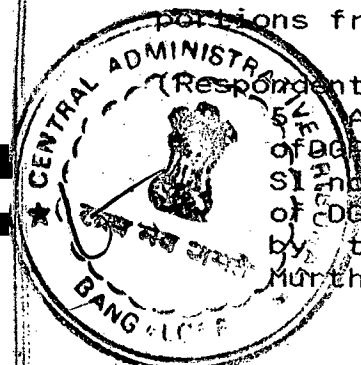
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3. It is significant to note that the order promoting him as DGP (Annexure A1) was an uninhibited one. It did not say anything i.e., whether his promotion as DGP and appointment to the post in question was subject to the approval of the Government of India as required under Rule 9(7) of the IPS (pay) Rules, 1954. In the Karnataka State cadre of IPS there was only one post of a DGP encadred. As a result, not more than one post at the level of DGP in the scale of pay of Rs.7600-8000 could be operated ex-cadre and to be reckoned against the State Deputation Reserve without the prior approval of the Central Government under Rule 9(7) of the I.P.S. (Pay) Rules 1954. It is a common ground that while appointing the applicant Sri.Chopra and one more officer by name Sri Ramalingam, who was senior to Sri Chopra it was nowhere mentioned that the promotion of these officers as D.G.P. and their appointment to posts equivalent to that of DGP had the prior approval of the Government of India or that they would be subject to the approval of the Government of India. As a matter of fact, in the statement of objections ~~objections~~ filed on behalf of the State Government the position with reference to the applicant and other officer Sri.Ramalingam is sought to be explained and reasons are adduced as to why both Sri Ramalingam and Sri Chopra could not be given the higher pay scale attached to the post of DGP. We think it appropriate to excerpt the relevant portions from the counter statement of the State Government

(Respondent-1) which read:-

As there was only one cadre post in the rank of DGP, and Sri M.S. Raghuraman, the officer at Sl.no.1, in the rank, was holding the cadre post of DG and IGP pay in the rank of DGP was allowed by the Accountant General, only too Sri S.N.S.. Murthy, the immediate junior officer, treating the

contd..4/-



post of DGP crimes held by him as ex-cadre post, in accordance with the provisions of Rule 9(7) of IPS (PAY) Rules, 1954. The next two officers, viz. R. Ramalingam and RS Chopra (the applicant herein) did not get the benefit of pay fixation in the rank of DGP, since they were at Sl.No.3 and 4 in the rank respectively. However, they continued to draw pay in the rank of Addl.DGP, i.e., in the scale of Rs. 7300-7600/-.

6. Subsequently due to retirement of Sri M.S. Raghuram, Sri R. Ramalingam, was elevated to No.2 position and accordingly, pay in the rank of DGP was allowed to him with effect from 1.8.92. The applicant who was at no.3 position, however retired from service on superannuation with effect from 31.12.93. Sri S.N.S. Murthy retired on 1.2.94 and Sri R. Ramalingam, is still in service.

7. Since there was no change in the position of the applicant till his retirement, he was not eligible for pay in the rank of DGP as per rule 9(7) of IPS (PAY) Rules, 1954.

8. Though the State Government had promoted the applicant to the rank of DGP, prior approval of Central Government as required under the above said rule, was not obtained. However, the State Government subsequently moved the Government of India to allow the State Government to operate addl. ex-cadre posts in the rank of DGP. The Government of India was also moved to en-cadre one more post in the rank of DGP, which would have enabled the State Government to accommodate 4 officers in that rank thereby regularising the promotion of the applicant. However, the Government of India had informed that this request of the State Government would be considered during the Triennial Cadre review meeting, which was due to be held in Oct.94. Further, since the 1:1 ratio had exceeded, the Government of India had advised the State Government to discontinue the addl. posts created in this rank. However, the State Government did not revert these officers. Accordingly, the applicant continued to hold the post designated in the rank of DGP, but he was authorised salary in the lower rank i.e. Addl.DGP.

From the above, it is clear the reason why the applicant was not paid the salary of a DGP was because he could not be treated as someone regularly appointed to the level of a DGP since no such post was available at that time and none was also created later with the approval of the Government of

India. The upshot of the whole thing is the applicant retired from service without drawing the pay of a DGP in the scale of Rs.7600-8000. The representation made to the Karnataka Government met with rejection as per Annexure A4 which reads:-

Subject: Authorisation of Pay in the scale of Rs.7600-8000.

Ref: Your letter dated 1.7.1994.

In Government Notification No.DPAR.271.SPS. 91 dated 24.10.1991, you were promoted to the rank of DGP in the above super time scale of IPS i.e., Rs.7600-8000 along with Sri.R.Ramalingam, However, the Government of India in its Notification dated 10.2.89 had imposed restrictions under Rule 9(7) of I.P.S.(Pay) Rules 1954. According to this, the State Government can operate ex-cadre posts in the rank of DGP equal to the number ex-cadre post in that rank. For creation/operation of additional ex-cadre posts of DGP rank prior approval of Central Government is necessary. As there is only one cadre post in the State in the rank of DGP, there is a provision to operate one ex-cadre post only in that rank.

Since the ratio of 1:1 had exceeded, the Government, of India had advised the State Government to discontinue the additional posts created in this rank. The State Govt, moved the Govt of India to reconsider the matter and fix your pay in the DGP's pay scale. The Government of India has, however, declined to accept the request.

I am therefore directed to inform you accordingly.

The aforesaid Government letter explains the position and as a matter of fact the State Government seemed to be willing to assist the applicant but because the Government of India had declined to approve creation of an ex-cadre post it could do nothing for him. Be that as it may, the fact remains the applicant had worked at the level of DGP for a period of more



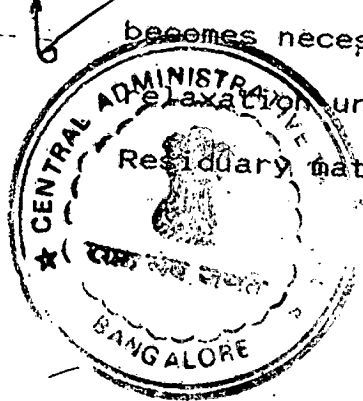
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than 2 years between 31-10-1991 to 31-12-1993. He has discharged the responsibilities and duties of the top most post which had the pay scale of Rs.7600-8000. The applicant having worked for more than 2 years at the level of DGP was turned out without giving the benefit of the pay scale of DGP although he had been getting the Additional Director General's pay, which is 7300-7600.

4. We think it appropriate to point out that in the first instance the State Government had appointed the applicant to the post of DGP knowing fully well there was no vacancy. If at the level of DGP only two posts were available in the ratio of 1:1 and there were officers above the applicant who had the benefit of the ex-cadre post it would have been prudent and proper on the part of the State Government not to have promoted the applicant or any one else at all to the post of DGP. At any rate having decided to do so they should have atleast put the officer on the alert by inserting a clause in the promotion/appointment order itself stating that the promotion/appointment would be subject to the approval of the Government of India. No such thing was done. The applicant was blindly promoted and appointed. He, of course, assumed charge and functioned at the level of DGP without getting the pay of the posts he had held. It was wrong on the part of the Karantaka Government in promoting the applicant as DGP and appointing him in a non-existent vacancy. ^{What} ^{the} ^{now} grieves is the fact that he was to work and in the end turned out with empty hands by pointing a finger to the Government of India for not creating an extra post into which the applicant could have been

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fitted. ~~inducted~~. We find in para 8 of the reply statement of the State Government, which clearly mentions that for creating the post to accommodate the applicant prior approval of the Government of India was not obtained. Then the State Government subsequently moved the Government of India but the Government of India did not clear the proposal and instead advised the Government of Karnataka to discontinue the additional posts created in the rank of the DGP. Even so, the State Government continued the officers in posts at the level of DGP despite lack of sanction. This clearly shows that the Government of Karnataka had been totally indifferent to the situation. Being fully aware of the fact that the appointment of people like the applicant and others in posts or DGP beyond a certain limit required special approval of the Government of India nonetheless having acted in the absence of such sanction, the blame for this faux pas rests squarely on the shoulders of the State Government. But blaming the State Government will not bring any solace to the applicant who discharged the higher duties and responsibilities in posts at the level of DGP for over 2 years before he retired finally without being paid for discharging such higher duties and responsibilities.

In the circumstances, we think it appropriate^{do parat} that even now the Government of India, ⁴ could make an order as they certainly have the power and authority to give ex-post facto sanction for creation of one or more ex cadre posts and if it becomes necessary they could even take recourse to powers for relaxation under the All India Services (Conditions of service-Residuary matters) Rules, 1960. Accordingly, we hereby direct



the Government of India to consider the case of the applicant in the light of the facts indicated above and pass appropriate orders so that the appointment of the applicant to the post at the level of DGP may stand regularised and he thereby get the benefit of the higher pay of the post of DGP for the period he had worked as DGP.

5. For the reasons mentioned above, this application succeeds to the extent indicated. The Government of India is directed to take a decision in regard to the grant of approval to the creation of an extra post or posts for regularizing the appointment of the applicant within 6 months from the date of receipt of a copy of this order by the Government of India, i.e., respondent no.3.

Sd/- Sd/-

MEMBER(A)

VICE CHAIRMAN



TRUE COPY

[Signature]
24/8/95

Section Officer
Central Administrative Tribunal
Bangalore Bench
Bangalore

Filed by Shri M.S. Padmarajah, Secy in the
sets. Copy served on the other side by post.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL MAY BE POSTED
BANGALORE BENCH, BANGALORE

on 29-3-96



IN THE M.A.No. 98/96

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IN THE MATTER OF

O.A.No. 2090/96

27/3/96

Shri R.S. Chopra

Applicant

V/s

UOI & Others

Respondent

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M. S. Padmarajah
(M.S. Padmarajah)
Sr. C.G.S.C.
'Priyakaarini'
Advocate

No.40, Lakshmi Complex, III Floor
(Opp. V.V. Hospital), K.R. Road,
Fort, Bangalore- 560002

Copy by Speed Post to:

Shri R.S. Chopra, IPS(Retd.),
No. 66, MOHS,
16th Main BTM Layout,
Bangalore.

बीमा नहीं NOT INSURED		क्रमांक No.
बतौर गये डाक टिकटों का मूल्य रु. 13	पे. 407	
Amount of Stamps affixed Rs.		
एक रजिस्टर्ड	पाप्त किया	तारीख मोहर
Received a Registered	मोहर	डा. 27/3/96
पानेवाले का नाम	Bangalore	
Addressed to		
पानेवाले अधिकारी के हस्ताक्षर		
Signature of Receiving Officer		

A copy of the O.A. has been
sent by RPS to the Advocate
the Applicant. Postal Receipt
is Attached
M. S. Padmarajah
27-3-96

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH
BANGALORE

M.A.No. /96
In the O.A.No. 2090/94
In the matter of

Shri R.S.Chopra

Applicant

V/s

UOI & Others

respondent

MISC. APPLICATION ON BEHALF OF RESPONDENTS FOR
EXTENSION OF TIME IN COMPLYING WITH THE JUDGEMENT

Most Respectfully sheweth :

That the above original application was decided in this Tribunal on 9.8.1995 and a copy of Judgement was received in the concerned section of MHA.

That the Tribunal partly allowed the original application inter-alia with the following directions :-

“ In the circumstances, we think it appropriate deponent that even now the Government of India, could make an order as they certainly have the power and authority to give ex-post facto sanction for creation of one or more ex-cadre posts and if it becomes necessary they could even take recourse to powers for relaxation under the All India Services (Conditions of Service- Residuary matters) Rules, 1960.

(के. आनन्द कृष्णन)
(K. ANANDA KRISHNAN)
अवर सचिव
Under Secretary
गृह मन्त्रालय
Ministry of Home Affairs

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Accordingly, we hereby direct the Government of India to consider the case of the applicant in the light of the facts indicated above and pass appropriate orders so that the appointment of the applicant to the post at the level of DGP may stand regularised and he thereby get the benefit of the higher pay of the post of DGP for the period he had worked as DGP.

For the reasons mentioned above, this application succeeds to the extent indicated. The Government of India is directed to take a decision in regard to the grant of approval to the creation of an extra post or posts for regularising the appointment of the applicant, within 6 months from the date of receipt of a copy of this order by the Government of India. ”
A copy of judgment² is placed at Annex I .

That the judgement and order, dt.9.8.1995 of CAT, Bangalore Bench, Bangalore, passed in Application No. 2090/94 was received in the concerned section of the MHA on 28.9.1995. It was examined carefully and thereafter file was sent to Ministry of Personnel, Public Grievances and Pensions for their comments. After obtaining views of DOP&T, the file was sent to Ministry of Law for their opinion on the legal issues involved in the implementation of the CAT's order/ judgement dated 9.8.1995. However, Ministry of Law requested for certain additional

(कै० आनंद कृष्ण)
ANANDA KRISHNAN
अवर सचिव
Under Secretary
विधि विभाग
Ministry of Law

would be evident from the following that delay in taking a final view in the matter has been caused due to unavoidable circumstances as indicated in the Chronological Statement of events as placed at Annexure - II.

As this respondent on merits, has got a very good case and as the matter is of immense importance having far reaching consequences, effecting public interest in general and huge Govt. revenue in particular, it was decided to file a SLP before the Supreme Court of India. However, inspite of all out efforts, the scruting and other connected process could not be completed, earlier and hence some delay. Hon'ble Supreme Court listed the matter for 26.2.1996 and have issued notices accordingly, to all concerned. However, Court has not yet pleased to grant ex-posts stay to the operation of this Hon'ble CAT's judgement/order as requested for by this respondent.

However, Ministry of Law have been requested to move Learned ASG to obtain a stay from the Hon'ble Supreme court as per Annexure III.

In view of the submissions made hereinabove, it is most respectfully prayed that further 3 months time may kindly be granted to

(क० आनन्द कृष्ण)
(K. ANANDA KRISHN)
अवर सचिव
Under Secretary
मुख्य सचिव

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the respondents to enable them to obtain stay to the operation of CATs order, dt. 9.8.1995 or otherwise to process the matter for implementation, in case Hon'ble Supreme Court directs accordingly.

For this act of kindness the respondents shall ever pray.


DEPONENT

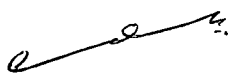
(सु. आनन्द कृष्णन)
(M. ANANDA KRISHNAN)
अवर सचिव
Under Secretary
गृह मन्त्रालय
Ministry of Home Affairs

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V E R I F I C A T I O N

I, K. Ananda Krishnan working as Under Secretary in the Ministry of Home Affairs do hereby verified that the contents of the pregoing M.A. for extension of time are true and correct based on records and no part of it is false and nothing material has been concealed therefrom.

Verified at New Delhi, this day of


Respondent
(क० आनन्द कृष्णन)
(K. ANANDA KRISHNAN)
अवर सचिव
Under Secretary
गृह मन्त्रालय
Ministry of Home Affairs

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CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

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

Misc. Appln. No. 98 of 96 in

Dated:

9 APR 1996

APPLICATION NO. 2090 of 1994.

APPLICANT(S) : R.S. Chopra,

V/s.,

RESPONDENTS : Chief Secretary, State of Karnataka,
Bangalore and two others.,

To.

1. Sri. Mahesh R. Uppin, Advocate,
No. 31, Guru Krupa, Srikanth Layout,
High Grounds, Bangalore-1.
2. Sri. B. B. Mandappa, Advocate for Govt. of
Karnataka, Advocate General's Office,
KAT Unit, BDA Complex, Indiranagar,
Bangalore-38.
3. Sri. M. S. Padmarajaiah, Sr. CGSC,
High Court Bldg, Bangalore-1.

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

A copy of the Order/Stay Order/Interim Order,
passed by this Tribunal in the above stated applicatio(s)
is enclosed for information and further necessary action.
The Order was pronounced on 29th March, 1996.

Issued
9/9/96
*gm**

for Deputy Registrar
Judicial Branches.

de

-8- 093

D.A.

Office Notes

Orders of Tribunal

DPH(VC)/VR(PA)

29.3.96

Orders on M.A.98/96 for extension of time

We absolutely find no grounds to extend time. M.A. rejected.

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sd-



MEMBER(A)

VICE CHAIRMAN

TRUE COPY

[Signature] 09/4/96

Section Officer,
Central Administrative Tribunal
Bangalore Bench
Bangalore