

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

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

Dated: 6 FEB 1995

APPLICATION NO: 31 and 532 to 540 of 1994.

APPLICANTS:- S/Shri.B.N.Nagarajan and nine others.,

V/S.

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

To:

1. Sri.O.Sridharan, Advocate,
Indira Mahal Lodge,
5th Main Road, Gandhinagar,
Bangalore-560 009.
2. Sri.M.S.Padmarajaiah,
Senior Central Govt.Stng.Counsel,
High Court Bldg, Bangalore-1.

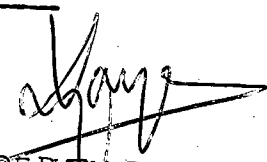
Subject:- Forwarding of copies of the Orders passed by the
Central Administrative Tribunal, Bangalore.

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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 01-02-1995.

Issued on
6/2/95
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DEPUTY REGISTRAR
JUDICIAL BRANCHES.

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

O.A. NO.31 & 532 to 540/94

WEDNESDAY THIS THE FIRST DAY OF FEBRUARY 1995

Shri V. Ramakrishnan ... Member [A]

Shri A.N. Vujjanaradhya ... Member [J]

1. B.N. Nagarajan
2. M. Prakash
3. P. Vijayakumar
4. G. Narendrakumar
5. K. Pradaban
6. T. Manivannan
7. V.Dhakshinamurthy
8. Rabinkumar Polley
9. D. Sugumaran
10. M. Mohan

All are majors and
working as Senior Scientific
Assistants, Aero-nautical Development Estt.,
C.V.Raman Nagar,
Bangalore.

... Applicants

[By Advocate Shri O. Sridharan]

v.

1. Union of India
by its Secretary,
Ministry of Defence,
Government of India,
New Delhi.
2. The Scientific Advisor
to Rakshamantry &
Director General,
Defence Research &
Development Organisation,
Sena Bhavan, New Delhi.

Director,
Aeronautical Development
Establishment,
C.V.Ramannagar,
Bangalore-93.

... Respondents

[By Advocate Shri M.S. Padmarajaiah ...
Senior Standing Counsel for Central Government]



O R D E R

Shri A.N. Vujjanaradhya, Member [J]:

1. The applicant is aggrieved by the non-implementation of the O.M. No.9[1]/85/D/[ECG]/IC/1 dated 11.11.1988 of Government of India, Ministry of Defence and has made this application under Section 19 of the Administrative Tribunals Act, 1985.

2. Briefly stated the case of the applicant is as below:


Accepting the Arbitration Award, Government of India passed order sanctioning upgradation of 822 posts of Senior Scientific Assistants ['SSA' for short] in Defence Research and Development Organisation and 101 in DGOA in the pay scale of Rs.2375-3500 in OM dated 11.11.1988 as in annexure A-1. The respondents ['R' for short] gave appointments working in the lower scale of Rs.1640-2900 on the basis of Seniority-cum--fitness. One R. Pinto who was junior at S.No.690 in the seniority list at Annexure A-3 was appointed to the higher scale on 7.6.1990, while Shri Mangaraju who was senior to him at S.No.684 was appointed to the higher scale only on 13.1.1991 as per the seniority list dated 5.11.1990 as in Annexure A-4. This was in accordance with the orders issued by the Central Government on reservation of appointments and posts for the SC & ST. Some appointments were also given to the qualified SC and ST and some posts to which

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no candidates from reserved categories were available, were dereserved as per circular dated 29.3.1990 [Annexure A-5] and were given to general candidates. While accepting the Arbitration award R-1 has ordered that the Recruitment Rules ['RR' for short] shall be amended suitably in due course but not so far amended as such. But R-1 in supersession of the RR issued the Defence Research and Development Organisation, Ministry of Defence [Group C and D] industrial Posts Recruitment Rules, 1990, as in Annexure A-7. In Rule 7, R-1 has made provision for reservation relaxation and concessions required to be provided to the SC and ST, etc. Since no RRs were framed by the respondents for the appointment of SSAs to the higher posts of Rs.2375--3500, this Tribunal passed judgment on an earlier occasion that there was no reservation for SC and ST in such appointments. The omission and inaction on the part of the respondent had resulted in denial of appointment opportunity to the higher posts to the applicants who were qualified to be appointed to the higher scale. The representations made by the applicants have not been replied to. Hence the application for the following reliefs:

- a. Direct the respondents to amend suitably the recruitment rules in respect of appointment/promotion to the posts of Senior Scientific Assistants in the grade of Rs.2375-3500 as per the direction contained in official memorandum dated 11.11.1988;
- b. Carry forward the de-reserved vacancies of Senior Scientific Assistants having the pay scale of Rs.2375-3500 meant for scheduled castes and scheduled tribes;



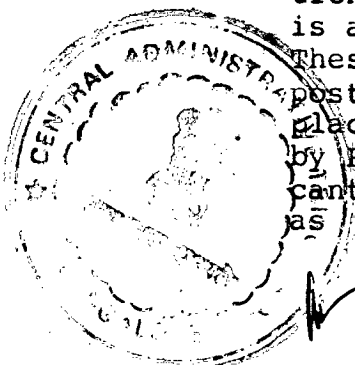
- c. Reserve 15% and 7½% of the posts of Senior Scientific Assistants having the scale of pay of Rs.2375-3500 for the scheduled castes and tribes respectively;
 - d. Consider the appointments/promotions of the applicants to the reserved posts of Senior Scientific Assistants with the pay scale of Rs.2375-3500 and for other reliefs deemed fit.
3. The respondents oppose the application and contend that with the approval of the Secretary, Defence [R&D] that there would not be any need to amend RRs as it was proposed to treat the higher pay scales as non-functional selection grade and the higher pay scales is only a placement and not promotion and further that both the categories have only one seniority list and perform similar duties and shoulder the same responsibilities. The respondents further contend that the application is not maintainable as the question is one of policy.
4. We have heard Shri O. Sridharan, learned counsel for the applicants and Shri M.S. Padmarajaiah, learned Senior Standing Counsel for the respondents.
5. Relying on the decision passed by a Bench of this Tribunal in O.A. No.458 to 500/90 in respect of one R. Pinto and 42 others decided on 30.12.1991, the learned Standing Counsel, contended that the Tribunal having reached the conclusion that it is a case of placement in higher scale and not promotion and, therefore, there could not be any reservation for SC/ST and as that decision came to be confirmed by
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the Supreme Court, there was no question of amending RRs and, therefore, the application as brought is not maintainable.

6. Shri Sridharan sought to make a distinction and contended with reference to OM dated 11.11.1988 as in Annexure A-1 that the President of India had directed the RRs should be amended suitably in due course which is not complied with by the respondents and, therefore, the respondents are not entitled to place any reliance on the decision rendered in the case of Pinto and others.

7. We have to observe that the decision in Pinto's case has made the matter very clear and the same came to be upheld by the Supreme Court which has confirmed the same in SLP. It is necessary to quote the observation and final conclusion of the Tribunal in that case:

"... In view of the conclusion reached by us that the application of the roster prescribing preference to SC/ST candidates to be placed in the upgraded posts is not in accordance with law, the action of R1 to R3 depriving the applicants for being considered for placement in the upgraded posts and placing respondents 4 to 25 who are juniors to the applicants in the upgraded posts cannot be sustained. We think in the facts and circumstances of the case it would not be proper to give a direction to revert respondents 4 to 25 from the upgraded posts carrying the higher scale of pay. Respondents 4 to 25 came to be placed in the upgraded posts on the basis of a wrong assumption that the roster prescribing reservation for SC/ST is also applicable for placement in the upgraded posts. These respondents have been placed in the upgraded posts and are drawing the higher salary since their placement in the upgraded posts. It has been stated by R-1 to 3 in their reply that the case of the applicants for grant of higher pay scale will be considered as per their seniority. We are not aware whether



subsequent to the filing of these applications any of the applicants have been placed in the upgraded post with higher pay scale. In the facts and circumstances of this case and in the interests of justice, we feel that these applications have to be allowed as per order below and by giving the following directions:-

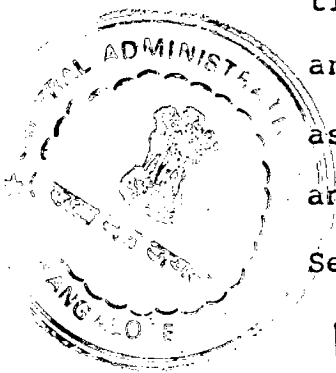
1. We hold that the application of the roster providing reservation for SC/ST to the placement of SSAs in the upgraded posts carrying higher pay scale is unwarranted and without authority of law.
2. We direct the respondents 1 to 3 to adhere to the seniority list prepared as per Annexure-C dated 7.3.1989 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 atleast 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 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.

6. Respondents 1 to 3 are directed to comply with the directions aforesaid within a period of six months from the date of receipt of a copy of this order."

In view of decision which has expressly stated that the application of roster prescribing preference to SC/ST candidates to be placed in the upgraded posts is not in accordance with law, the action of R-1 to 3 therein depriving the applicants therein, for being considered for placement in the upgraded posts and placing R-4 to 25 who are juniors to the applicants therein in the upgraded posts cannot be sustained. Thus it has been clearly stated that because higher post is only non-functional and both seniors and juniors perform the same function and shoulder same responsibilities, it is not a promotion and there is no question of reservation for SC/STs or for any other category. On similar lines the respondents have taken the plea and their learned counsel had advanced the similar contentions which we have accepted.

8. Shri Sridharan placing stress on the mention in OM dated 11.11.1988 as in Annexure A-1 that the RRs should be amended suitably in due course and mentioning that it is an order issued by the President and the same cannot be undone by an executive order as in Annexure R-1 and R-2 respectively dated 31.1.1994 and 15.2.1994, because these are issued only by the Secretary they cannot override the direction of the



President of India as in Annexure A-1.

9. The respondents have explained the circumstance why they could not persue the matter in the light of Annexure A-1. Explaining the same the learned Standing Counsel contended that because of the decision rendered by this Tribunal in the case of Pinto and others that higher scale is only a placement and not a promotion and therefore, there cannot be any reservation for SC/ST in that cadre and the same having been confirmed by the Supreme Court, the respondents have taken the view that it is not necessary to amend RRs so as to provide for reservation. He also contended that it is a policy matter and the applicants have no right to seek a direction to the respondents to change the policy or to seek a direction to amend the RRs suitably. The respondents have not taken steps to amend RRs because of the decision stated above besides respondents have considered it to be a policy matter with respect to which no direction can be given.

10. The applicants have not challenged any specific order of the respondents. They seek a direction to the respondents to amend RRs and to carry forward the dereserved vacancies of SSAs and to reserve 15% and 7½% of posts for SC and ST respectively and to consider appointments of the applicants to such reserved posts. So far as the prayer relating to the direc-

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tion to amend the RRS is concerned, the same cannot be granted inasmuch as the view taken by a Bench of this Tribunal that the post in the higher scale of pay of Rs.2375-3500 are only non-functional and, therefore, there cannot be any reservation and regarding filling up of such posts by direct recruitment or otherwise is a question of policy which is left to the Department. The other relief sought by the applicants are in the nature of consequential reliefs and, therefore, the applicants will not be entitled to any of the reliefs sought. However, we are unable to agree with the contention of the learned Standing Counsel that the application as brought is not maintainable and the Tribunal has no jurisdiction inasmuch as the entire question relates to policy.

11. Referring to the commentary on the Constitution of India by the learned author Shri Seervai it was contended on behalf of the applicants that judiciary is also a state under Article 12 of the Constitution and is subject to fundamental rights and judiciary can be called upon to account for a violation of such fundamental rights. Continuing further learned counsel contended that there are ample powers for issue of direction as sought by the applicants in this application. We may state that in view of the decision rendered in the case of R. Pinto, there is no question of violation of any fundamental right. Consequently we are unable to accept this contention of the learned Standing Counsel.

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12. Reference was also made by the learned counsel for the applicants to the decision of Supreme Court rendered in the case of Mandal Commission and required us to settle all questions and also sought direction to be issued either to promote or to recruit directly to the higher post. In other words, the learned counsel wanted a direction to the respondents to be issued so as to amend the RRs which again is a question of policy and even this contention will not advance the case of the applicants any further.

13. In the light of the decision rendered in the case of R. Pinto and others confirmed by the Supreme Court, the action of the respondents in not taking any steps to amend the RRs cannot be found fault with. Thus we see no merit in this application and the same is liable to be dismissed.

12. In the result the application fails and the same is hereby dismissed but with no order as to costs.

Sd/-
11/11

MEMBER [J]

Sd/-
11/11

MEMBER [A]



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[Signature]
16/02/95
Section Officer
Central Administrative Tribunal
Bangalore Bench
Bangalore

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

✓ OA 532 to 540/94

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

Dated: **17 JUN 1996**

APPLICATION NO. RA 13 to 22/95

APPLICANT(S) : Shri B. N. Nagarajan & 9 ors
V/s.,

RESPONDENTS : Secy, M/o Defence & 2 ors.

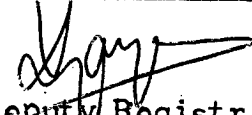
To.

1. Shri. O. Sreedharan
Advocate
Indira Mahal
511-Main, Gandhinagar,
Blore - 9.
2. Shri. M. S. Padmarajiah
Sr. C.G.Sc
High Court Bldg
Blore - 1

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

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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 13-6-96


for Deputy Registrar
Judicial Branches.

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

R.A. No.13 TO 22/95

THURSDAY THIS THE THIRTEENTH DAY OF JUNE 1996

Shri Justice D.P. Hiremath ... Vice-Chairman

Shri V. Ramakrishnan ... Member (A)

1. B.N. Nagarajan.
2. M. Prakash.
3. P. Vijayakumar.
4. G. Narendrakumar.
5. K. Pradaban.
6. T. Manivannan.
7. V. Dakshinamurthy.
8. Rabinkumar Polley.
9. D. Sugumaran.
10. M. Mohan

All are majors and
working as Senior
Scientific Assistants,
Aeronautical Development
Establishment,
C.V. Ramannagar,
Bangalore-93.

...Applicants

(By Advocate Shri O. Sreedharan)

v.

1. Union of India by its
Secretary,
Ministry of Defence,
Government of India,
New Delhi.
2. Scientific Advisor
to Raksha Mantry &
Director General,
Defence Research &
Development Organisation,
Sena Bhavan, New Delhi.
3. Director,
Aeronautical Development
Establishment,
C.V. Ramannagar,
Bangalore-93.

...Respondents

(By Advocate Shri M.S. Padmarajaiah ...
Senior Standing Counsel for Central Government)



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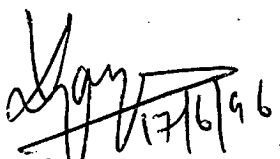
O R D E R

Justice D.P. Hiremath, Vice-Chairman:

1. Heard both the learned counsel. The decision was rendered in O.A. No.31/94 and 532 to 540/94 on 1.2.1995 by this Tribunal keeping in view the decision of the Supreme Court in Pinto's case and also then existing rules applicable to the recruitment, promotion, etc. The main grievance of the applicants is that though the respondents submitted during the hearing of that case that the Government was not considering amendment of recruitment rules they did amend the rules in August 1995 but the respondents' counsel pointed out that even this amendment is ^{not} in any manner beneficial to the applicants due to prospective nature inasmuch as the applicants were urging for providing for reservation of posts in the upgraded scale in 49% quota. This position was not disputed by the counsel for the applicants. In our view as the decision was rendered by the Tribunal on the material placed before it, we do not find any error apparent on the face of the record. Hence the Review Application is dismissed as not maintainable.



TRUE COPY


Section Officer
Central Administrative Tribunal
Bangalore Bench
Bangalore

bsv


(V. RAMAKRISHNAN)
Member (A)


(D.P. HIREMATH)
Vice-Chairman