

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO.170/01565 /2015

DATED THIS THE 3rd DAY OF JULY 2017

HON'BLE DR. K.B. SURESH, MEMBER(J)

HON'BLE SHRI PK.PRADHAN MEMBER(A)

K.Dhananjay,
Aged about 41 years,
S/o Late K.Krishnappa,
Engineer 'C' ,Indian Institute of Astrophysics,
No.9,,2nd Block, Koramangala,
Bengaluru-560 034. ..Applicant

(By Advocate Shri M.Krishna Rao)
vs.

1. Department of Personnel & Training(DOPT),
Govt. of India
Represented by its Secretary,
Room No.112,North Block,
New Delhi.110001.

2. Ministry of Finance,
Department of Expenditure,
Government of India,
represented by its
Controller General of Accounts,
Lok Nayak Bhawan,
Khan Market,
New Delhi-110 511.

3. Department of Science & Technology,
Government of India,
represented by its Secretary,
Technology Bhawan,
New Mehrauli Road,
New Delhi-110 016.

4. Governing Council of

Indian Institute of Astrophysics,
represented by its Chairman,
Dr.P.C.Agrawal,
Distinguished Guest Faculty,
Central for Excellence in Basic Sciences,
University of Mumbai,
Vidhanagari (Kalina),Campus,
Santacruz (East), Mumbai 400 098.

5.Indian Institute of Astrophysics,
represented by its Director,
No.9,,2nd Block, Koramangala,
Bengaluru-560 034.Respondents

(By Shri M. V. Rao, Senior Panel Counsel for R1-3
M/S Sundaraswamy & Ramadas for R4&5)

O R D E R (ORAL)

HON'BLE DR. K.B. SURESH, MEMBER(J)

Earlier one of us had declined to hear the matter. But, now due to paucity to constitute judges all over India, there is no way other than hearing the matter ourselves, as the Tribunal is now running with 35% of its strength. At this time, the applicant who is present himself in the court submits that he has full confidence in the Bench. So, now we hear.

Heard. The applicant prays for the following reliefs:-

1. *To direct the R.No.1, 2 & 4 to issue a scrupulous reprimand Office Order/Memorandum/Standing Instructions in respect of a declaration,*

specifically on the restricted Powers/Sanctity of the Governing Bodies of the Central Autonomous Bodies for implementation and operation of any type of Non-Statutory Recruitment Rules (RR) may attract retrospective recovery of excess payments made to irregular beneficiaries. Hence, to avoid the same, operation of time to time revised and competent authority approved Statutory – Recruitment Rules and all other Policies is compulsory [as per Grounds and Legal Provisions evidenced in Step -1 at Para No.5.9.1 in Page No.150 of OA]. Consequentially

Regarding this relief, it prays for a scrupulous reprimand Office Order/Memorandum/Standing Instructions in respect of a declaration, for the restricted Powers/Sanctity of the Governing Bodies. Quiet obviously, the Governing Body and the Institution which created powers for it granted it to do the needful expedition. We are unable to understand how the applicant can challenge the constitution of the Autonomous Body and it is squarely in the realm of the executive government and the Parliament and nobody else. Therefore, quite obviously this relief will not lie. It may also pertinent to note that on the same grounds applicant had approached the Hon'ble High Court of Karnataka and had to suffer the imposition of costs.

2. *To direct the R.No.1, 2 & 4 to ab-initio, declare the “Provisional Recruitment Rules of IIA, 1971 (Annex-A1)” as the subsisted and inviolate lawful provisional RR of IIA and further to declare the Posts & Pay-scales as mentioned in Table-(4.10.2) as the lawfully adjudicated, resolved and*

fixed/stipulated ceiling limit admissible to IIA. Accordingly, R.No.1, 2 & 3 may be pleased formulate a statutory “RR of IIA, 2015”. Further, to declare the “fabricated Recruitment Rules of IIA, 1999 (Annex-A3)” and all other undocumented arbitrary Recruitment Rules practically operated in-situ in IIA as INVALID, ILLEGAL and NULL & VOID and ab-initio non est in the eyes of law. [as per Grounds and Legal Provisions evidenced in Step -2 & 3 at Para No.5.9.2 & 5.9.3 in Page No.151-152 of OA]. Consequentially

The 2nd relief calls us to declare a provisional Recruitment Rules of the respondents as not binding, in other words he finds that some of the provisions of the flexible complimenting scheme and others would be arbitrarily imposed on him and his coworkers and therefore, we should interfere in this matter. We fail to understand how we can do so, as we are not led to be convinced. There is nothing unconstitutional in the scheme or its implementation. It is also pertinent to note herein that if the rules are to be amended on the dictates of an applicant, all those who are necessarily affected by the rules must also to be heard. If the applicant has one set of right, the same set of right and to be given to the others as well. Quite obviously, they are not in the party array. At least for nonjoinder and noneffective order to be passed. This relief also will not lie. The same relief was canvassed in the Hon'ble High Court and rejected.

3. *To direct the R.No.1 to 9 for executing the retrospective recovery of excess payment made to all irregular beneficiaries of IIA, in accordance with the principles and guidelines as laid out in the Judgement, dated 17.08.2012, by the Hon'ble Supreme Court of India, in Civil Appeal No.5899/2012, between Chandi Prasad Uniyal & others V/s State of Uttarkhand & others (Annex-A11) and O.M F. No.18/26/2011-Estt (Pay-1), dated 06.02.2014 (see para 5.7.iii) [as per Grounds and Legal Provisions evidenced in Step -4 to 9 at Para No.5.9.4 & 5.9.9 in Page No.152 - 155 of OA]. Consequentially*

This relief calls for extracting the retrospective recovery of alleged excess payment made to all irregular beneficiaries of the respondents. Along with the learned counsel, the applicant himself was also present in the court and we extended the courtesy to hear him also. He would say that the alleged beneficiaries are all his coworkers from 1971 onwards. It is a very hard parameter to cover, especially when we find that they are not in the party array and therefore, unable to hear. He would rely on one case of the Hon'ble Apex Court in Civil Appeal No.5899/2012, between Chandi Prasad Uniyal & others V/s State of Uttarkhand & others which is produced as Annexure -A11 and O.M F. No.18/26/2011-Estt (Pay-1), dated 6.2.2014. But then, Uniyal's case is not relevant in this matter. Unless we hear the party and give the opportunity to being heard and defend their rights to the concerned, we cannot obviously pass an order against them. Therefore, this relief also

will not lie. This relief was also canvassed before the Hon'ble High Court and rejected.

4. *To Direct the R.No.1 to 9 to pass a resolution on engagement of a Private Counsel at exorbitantly high rate of Fee is illegal and the authorities (for e.g. R.No.13 & 14 in this OA) of the wholly Government Funded Central Autonomous Bodies (for e.g. IIA in this OA) are to compulsorily engage either any empanelled Govt. Standing Counsels or if they engage any Private Counsel, the rate of Fee shall be compulsorily the same as applicable to the empanelled Govt. Standing Counsels. Failure to pursuance of this Orders may enforce the Government to recover the excess payments made to Private Counsel from the Salary/Pay of the authority, who engaged the Private Counsel [as per Grounds and Legal Provisions evidenced in 4.49, 5.3 & 5.4 in Page No.101-104 & 122-128 of OA]. Consequentially*

This relief calls for determining the vakalat of the present counsel appearing for the respondents. Possibly if grave mistake or misconduct is called forth, we can do so. Therefore, we had asked the applicant himself to elucidate. He would say that this counsel takes high amount of fees. Naturally, when a party decides to engage a good counsel they have to pay a good fees also and that goes without saying. Being an autonomous body, they have certain powers which may not rest with exact government organisations and it is in, their interest to engage their own Advocate. Therefore, this relief also can not lie.

5. *To direct the R.No.1 to 9 for suitably making a statutory proposal for the introduction of certain most essential and imperative Articles/Clauses/Rules/ Provisions/Definitions/Jurisdictions/Powers/etc as listed below:-*

The next relief claimed is the opposite of several other claims. Therefore, we have chosen to answer the components also.

6. *“Right to restore Tax Payer’s money” as Fundamental Rights in the Constitution of India” (Para 5.1.7.A of OA)*

This relief calls for amendment of the Constitution by the Tribunal. The applicant seeks that the Tribunal should restore the Tax Payer's money as Fundamental Right in the Constitution. Needless to say all Courts have intervened and made concerned official responsible for making payment rather than the exchequer of the Court, in extreme circumstances but that cannot be termed as a Fundamental Right of the applicant, as there is nothing fundamental in that. If at all he would like to have a Court of law to declare an amount which is paid or given over to a person as largesse. Then he need to approach the Civil Court under Section 9 of CPC, precisely no Tribunal or Court in the country can seek an amendment of the Constitution as a right in itself. It is the function necessarily to be done by the Parliament of India and that too with such heavy restriction.

7. *White Collar Corruption, retrospective recovery proceeding and registering an F.I.R on white-collar-corrupts (Para 5.1.7.B of OA)*

Thereafter the applicant's counsel called for eradication of White Collar Corruption, retrospective recovery by proceeding and registering an F.I.R on While Collar Corruption. This is so large a canvass that no Court can answer. Being a service Tribunal there are certain restrictions placed on the Central Administrative Tribunal, it can quite obviously act only within these parameters. This appears to us as violating the fundamental of its Constitution.

8. *Recovery of loss from white-collar-corrupts under Rule 11(iii) of the CCS(CCA) Rules (Para 5.1.7.C of OA)*

The applicant calls for recovery of loss from white collar corrupts. Probably he may mean that loss from all the white collar corrupt people must be recovered. That is the reason why we have the investigating authorities. If the applicant had a specific complaint nothing will debar him from giving a complaint to this effect. Unless there is specifically any complaint and some *prima-facie* matrix is to be looked into , nobody could do anything about it. This relief also will not, therefore lie as it is so vague and purposeless.

9. *Widening the Section 19(1) of A.T Act, 1985 for filing cases to protect interest of Govt. Public funds and irregularities (Para 5.1.7.D of OA).*

Section 19(1) of A.T. Act, 1985 is for filing cases to protect the

interest of Government Public funds and irregularities. True, in suitable cases, we may also direct that the money may be recovered from the concerned official. But that goes by merits of each case. The interest of the government should and would be looked after by the government only and not by any other body. They know how to protect these. We don't need to tell them and widening the scope of Section 19(1) of AT Act, 1985 is a job of the Parliament to do. We can only advise by interpreting it. But, then some widening, by interpretations of technical parts of the legislative wisdom of Parliament may be possible but in this case there is nothing of that sort exist which will call for our intervention. This relief also will not therefore lie.

10. *Which are presently absent in the extant Statute Books, as stated at Para 5.1.7 of OA (Page No.115 of OA) and place the same before the competent functionaries in the Parliament for their decisions on this matter [as per Grounds and Legal Provisions evidenced in 5.1.7 in Page No.115-122 of OA]. Consequentially*

Thereafter, the applicant claims that whatever is absent in the extant Statute Books may be cleared by the Tribunal. Quite obviously ,it is not the job of the Tribunal. If there are lacunae on the Statute Books this had to be looked for by the Parliament. The applicant will be advised to approach such authorities as may be necessary. At this point of time, we are advised that the Hon'ble High Court also had under the same matrix considered the matter in whole before and the interests of justice

was saved by imposing cost on the applicant. But as the applicant is a young man and a Scientist, we do not want to impose any cost on him. OA is dismissed. No order as to costs.

(PK.PRADHAN)
MEMBER(A)

bk.

(DR. K.B. SURESH)
MEMBER(J)