

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH**

ORIGINAL APPLICATION NO.170/00304-00348/2018

DATED THIS THE 21st DAY OF MARCH, 2019

HON'BLE DR.K.B.SURESH, JUDICIAL MEMBER

HON'BLE SHRI C.V.SANKAR, ADMINISTRATIVE MEMBER

1. Sri S.D.Jayaprakash
S/o S.B.Dakshinamurthyachar
Aged 48 years
112, Manasvini 2nd Cross
Jnanabarathi Layout
BDA 1st Block
Near Bangalore University
Bangalore-560056.
2. Sri.M.Ravi
S/o G.Mariyappa
Aged 46 years.
3. Sri Rudraiah
S/o Late Kyathaiah
Aged 48 years.
4. Smt. Dhanalaksmi S.
W/o Srinivasa Murthy
Aged 47 years.
5. Sri Jagadish B.
S/o Venkata Naik
Aged 47 years.
6. Smt.Jaya Bisht
W/o.B.S.Bisht
Aged 44 years.
7. Smt.Jyothis C.
W/o Noel Cardoza
Aged 47 years.
8. Sri.Kumar R
S/o H.Ramu
Aged 46 years.
9. Smt.Latha Rani B.V.
W/o Kumar R.
Aged 45 years.

- 10.Smt.Madhushalini
W/o.B.Shivaraj
Aged 47 years.
- 11.Smt.Rajalakshmi A.S.
W/o.D.E.Lakshmi Prakash
Aged 47 years.
- 12.Smt.Rekha T.
W/o M.C.Naveen
Aged 47 years.
- 13.Sri.Srinath D.A.
S/o D.R.Arunachalam
Aged 46 years.
- 14.Smt.Umarani M.S.
W/o B.V.Nagaraj
Aged 46 years.
- 15.Smt.Vidya N.
W/o N.Arun
Aged 47 years.
- 16.Smt.Hemalatha V.B.
W./o Jagannatha Nayaka R.
Aged 42 years.
- 17.Sri Indiresk Kumar C.
S/o N.Chandrashekar
Aged 44 years.
- 18.Smt.Lalitha P.
W/o A.Jeyashankar
Aged 46 years.
- 19.Smt.Malathi S.
W/o.Nanajundappa T.A.
Aged 44 years.
- 20.Sri Narendra Kumar J.
S/o. Jettappa
Aged 45 years.
- 21.Smt.Rajini K.
W/o Sridhara Adiga
Aged 44 years.
- 22.Smt.Sandhya S.N.
W/o.Krishna B.R.

Aged 44 years.

23.Sri.Shankar M.
Mahadevaiah M.R.
Aged 43 years.

24.Smt.Shobha Rani B.S.
W/o.Manjunath L.M.
Aged 44 years.

25.Smt.Sudharani K.C.
W/o.Indiresk Kumar C.
Aged 44 years.

26.Smt.R.Susmitha
W/o.Kiran Kumar V.S.
Aged 44 years.

27.Sri.Sunil S.
S/o.M.Satish
Aged 46 years.

28.Smt.Uma D.
W/o.Y.N.Prasad
Aged 44 years.

29.Smt.Suma G.
W/o.N.Suresh Babu
Aged 44 years.

30.Smt.Sadhana K.
W/o.M.S.Krishna Murthy
Aged 44 years.

31.Smt. Savitha C.
W/o.S.Khan
Aged 44 years.

32.Smt.Cheluvamba C.I.
W/o.S.C.Suresh Kumar
Aged 41 years.

33.Smt.Revathi D.S.
W/o.S.Vaidyeshwaran
Aged 37 years.

34.Sri Shanmukha
S/o Jogappa
Aged 50 years.

(Sl.No.1 to 34 are working as Data Entry Operators Grade-III)

35.Smt.Parimala Muralidhar
W/o.B.N.Muralidhara
Aged 44 years.

36.Smt.Jayalakshmi S.
W/o.Jayarama M.
Aged 44 years.

37.Sri Biswanath Samantha
S/o Kailashnath Samantha
Aged 41 years.

38.V.Suresha
S/o.Vagoji Rao
Aged 46 years.

(Sl.No.35 to 38 are working as LDC's)

39.Sri Vasudeva S.
S/o.M.L.Sathyanarayana
Aged 41 years.

40.Smt.Lalitha M.
W/o.K.Narasimiah
Aged 41 years.

41.Sri Raghunatha B.
S/o.Belur Achar
Aged 47 years.

42.Sri Kumar M.R.
S/o.M.S.Ramu
Aged 47 years.

43.Sri Sreenivasa Murthy R.
S/o Thirupathaiah R.
Aged 43 years.

44.Sri Nagaraja A.
S/o.Anjinappa
Aged 41 years.

45.Sri K.C.Ramaiah
S/o.Katti Polaiah
Aged 42 years.

(Sl.No.39-45 are working as MTS)

(All are working at National Sample Survey Office, Data Processing Centre, 3rd Floor, 'F' Wing, Kendriya Sadan, Koramangala, Bengaluru-560 034.)

....Applicants

(By Advocate Sri Ranganath S. Jois)

Vs.

1. The Union of India
Rep. by its Secretary
Ministry of Statistics and programme implementation
S.P.Bhavan
New Delhi-110 001.
 2. The Deputy Secretary
Government of India
Ministry of Statistics and programme implementation
S.P.Bhavan
New Delhi-110 001.
 3. The Under Secretary
Government of India
Ministry of Statistics and programme implementation
S.P.Bhavan
New Delhi-110 001.
 4. The Director General
National Sample Survey Office
Government of India
Ministry of Statistics and programme implementation
Sankyak Bhavan
New Delhi-110 003.
 5. The Additinal Director General
NSSO, Data Processing Division (Head Quarters)
No.164, GLT Road
Mahalanobis Bhavan
Kolkata-700 108.
 6. The Deputy Director General
National Sample Survey Office
Data Processing Center
Kendriya Sadana
'F' Wing, 3rd Floor
Koramangala
Bengaluru-560 034.
- ...Respondents

(By Advocates Sri Vishnu Bhat for R1 to 5)

O R D E R

(PER HON'BLE SHRI C.V.SANKAR, MEMBER (ADMN))

The case of the applicants is that they joined the respondent organisation on

contract basis after completing the due process of selection and through Employment Exchange and continued from time to time in the 'plan' posts which have been in existence for nearly 20 years. The applicants having completed more than 20 years of service, had approached the Tribunal in the OA.339/2011 which was allowed on 1.4.2013(Annexure-A1) with direction to regularise their service. The respondents had approached the Hon'ble High Court of Karnataka in WP.No.57381/2013 against the order of the Tribunal. The High Court dismissed the WP by order dtd.22.4.2014(Annexure-A2) confirming the order of the Tribunal as a result of which the applicants' services were regularised. Even though the services of the applicants have been regularised, they have been denied the several benefits available to the regular employees on the ground that they are working against the 'plan' posts. The Govt. of India by order dtd.19.12.2016(Annexure-A3) addressed to all the departments to carry out a comprehensive review regarding the existence of temporary posts upto the Deputy Secretary level and issue specific orders for conversion of the temporary posts into permanent ones subject to the condition that their existence was for more than 3 years. Again on 27.3.2017(Annexure-A4), the Govt. of India, Min. of Finance addressed a letter to all the departments for continuation of the on-going scheme and the same was again continued on 27.3.2017. Even then for nearly 2 years after the policy decision of the Government, the posts in which the applicants are working which are described as 'plan' posts have not been converted into 'non-plan' posts thereby affecting the conditions of service. The Ministry of Statistics issued a letter on 17.11.2017(Annexure-A5) granting further period of 3 years for continuation of the 'plan' posts. So far as the conversion of the posts into permanent posts, it was stated that it will be separately decided. Similar letters were issued on 29.12.2017 &

on 8.3.2017 extending the life of the posts, but the same has not been converted into regular posts so far. The 1st applicant has made representation on 3.4.2018(Annexure-A6) for conversion of the posts as they do not get the salary for the month of March 2018 due to the delay in the conversion of the posts. In the meanwhile, the Ministry of Statistics has issued a letter on 15.3.2018(Annexure-A7) postponing the conversion of the posts. Thus the conversion of the posts from plan to non-plan has substantially affected the applicants. In a similar case filed by one Smt.Suparna Santra in OA.No.935/2014, the Tribunal has issued direction to the respondents on 1.4.2015(Annexure-A8) to regularise her services. The review filed by the respondents in RP.37/2017 was dismissed on 24.11.2017(Annexure-A9) holding that there is not much difference between the 'plan' and 'non-plan' posts for regularisation. Even after the regularisation of their services in the year 2015, the applicants are not extended with the benefits available to the regular employees like leave etc. The continuation of the posts for such a long period pre-supposes the existence of the posts. Aggrieved by the delay in conversion of the posts even after 20 long years and further the denial of salary for the month of March 2018 on the ground that the conversion has not been made, the applicants have filed the present OA seeking to declare the non-compliance of the conversion of the plan posts to non-plan posts being arbitrary, illegal and violative of Articles 14, 16 and 21 of the Constitution of India and to direct the respondents to forthwith treat the posts held by the applicants as having been converted as non-plan posts and extend all the service benefits including leave, as is extended to the regular employees including the salary and allowances as revised from time to time from the date of regularisation.

2. Per contra, the respondents have submitted in their reply statement that the

applicants were appointed on contractual basis in June 1996, March 1997 and August 1999 under the 'Plan Scheme'. They filed OA.No.339/2011 before the Tribunal praying for regularisation of their service. The Tribunal vide judgment dtd.1.4.2013 allowed the OA. The Writ Petitions filed by the respondents before the Hon'ble High Court of Karnataka were dismissed. Then the Ministry conveyed the approval of the competent authority for implementation of the CAT's order dtd.1.4.2013 regarding regularisation of service of contract employees vide OM dtd.5.1.2015(Annexure-R1). Accordingly, the services of the applicants were regularised w.e.f. 5.1.2015 vide DPC, Bangalore's order dtd.1.4.2015(Annexure-R2) prospectively. However, the applicants have filed OAs.No.385-428/2015 and OA.No.520/2015 before the Tribunal praying for regularisation of their service from the date of their initial appointment or at least from the day of completion of 10 years of service from their initial appointment as in the case of *Uma Devi* and to extend them all the service benefits protection on par with regular employees including arrears of pay and ACP and other benefits. The Tribunal passed judgment on 19.1.2016 allowing the OAs and giving pay protection and pension benefits. It also ruled that for the purpose of seniority, ACP and other service benefit etc., the regular service of the applicants shall be reckoned from the date of completion of 10 years of service from their initial appointments on contract basis. The same was challenged before the Hon'ble High Court of Karnataka in WP.4712/2016 & 4714/2016. The High Court passed interim order on 2.2.2016(Annexure-R3) and granted stay for implementation of orders in sl.no.2 & 3 of the Tribunal's order dtd.19.1.2016. The High Court is yet to give its final order on pending issues. After due consultation with the DOPT, Ministry of Finance and Ministry of Law and with the approval of the competent authority, the relief at sl.no.1 of the Tribunal's order

dtd.19.01.2016 was implemented. After regularisation of the employees, the Ministry continued to give its approval for the continuation of the plan posts from time to time(Annexure-R4). However, no continuation order has been issued by the Ministry for extension of plan posts beyond 28th February 2018. The issue of continuation of plan posts and payment of salary for the employees working against these posts beyond February 2018 were taken up with the Headquarters/Ministry. The salary for the month of March 2018 could not be disbursed to the employees working against the plan posts in the absence of continuation of plan posts/specific instruction from the HQ/Ministry. It was due to non-receipt of continuation order of plan posts beyond 31.12.2017 and not due to issue of conversion of plan posts into the non-plan posts. Later, on the basis of instruction received by the HQ on 23.4.2018(Annexure-R5), the salary for the employees was disbursed on 24.4.2018. A decision has been taken by the DPD(HQ) to continue the payment of salary for the employees for whom court orders are in force until further orders. Subsequently, on the basis of the communication dtd.26.4.2018(Annexure-R6) received by the office, the salary for the Month of April 2018 was also disbursed on 24.4.2018. In the meanwhile, Dept. of Expenditure, Min. of Finance issued instruction vide OM dtd.19.12.2016 (Annexure-R7) keeping in view the conceptual changes in the field of creation of posts occurred over the periods and decided to review existing temporary posts up to the Dy.Secretary level in Ministries/Departments and allow their conversion into permanent ones as a onetime measure. Accordingly, all Financial Advisers were directed to carry out comprehensive review exercise to be completed by 19.3.2017. On 14th June, the Ministry vide OM dtd.8.6.2018 has conveyed the approval of the competent authority for continuation of 95 plan posts for another year w.e.f.

1.3.2018(Annexure-R8). Before arriving at regularisation decision, the Min. of Statistics and Programme Implementation has consulted the nodal ministries such as Min. of Law & Justice, Min. of Finance and DoPT. The main advice from the nodal ministry was to make regular appointment against temporary plan posts. The Ministry vide office memorandum dtd.5.1.2015 conveyed the approval to regularise the service of all the applicants in OA.No.339/2011. Hence, it is clear that as per the advice of the nodal ministries, the contract employees who are working against plan posts were regularised against plan posts only. Since the applicants were regularised against plan posts, the existence of posts depends on the continuity of the plan scheme. As such there is no ambiguity in regularising the services of these contract employees against plan posts. The statement of the applicants that they were denied several benefits including leave is denied on the ground that the leave cannot be claimed as of right and when the exigencies of public service so require, leave of any kind may be refused or revoked by the authority competent to grant it. The work assigned to the office has a definite time line and to complete the work within the time frame. Leave applications are considered based on the facts given in the leave applications as well as number of man power that will be available to the office to complete the task. The details of the leave availed by the applicants since January 2018 are at Annexure-R9. Among other facilities, the office has reimbursed Children Educational Allowance to 30 applicants in the month of April 2018(Annexure-R10). Even LTC is also availed by the applicants. Therefore, the contention of the applicants that they are denied the benefits available to the regular employees is denied. Regarding the issue of conversion of plan posts to non-plan posts, the Ministry has started the exercise in right direction and the outcome will be known once the exercise is complete. This exercise also involves approval from M/o

Finance. As such it may take some more time to come to a conclusion about conversion. In fact in the year 2007 itself, the Ministry has submitted a proposal for permanent absorption against regular non-plan vacancies for consideration of DoPT and Min of Finance. But none of these departments have agreed to conversion of plan posts to non-plan which clearly establishes that the Ministry has taken a lead way back in 2007 itself. Therefore, the applicants could have waited till a final decision is taken on that issue. It would be premature to call for the records unless the matter is decided by the Ministry in consultation with M/o Finance. Therefore, the applicants' demand of calling records is illegal and unjustified. As such the OA is liable to be dismissed.

3. The applicants have filed rejoinders reiterating the submission already made in the OA and submit that the Tribunal in RA.No.37/2017 has already held that there cannot be any distinction between the 'plan posts' and 'non-plan posts'. The respondents have contended that the process of conversion of plan posts and non-plan posts is before the Ministry of Finance and the same has not been agreed to even though as early as in the year 2007 the said proposal has been sent. As a result of the said delay in conversion of plan posts to non-plan posts on every occasion, there is a delay in payment of the applicants and recently the salary for the month of March 2018 was paid during the end of April 2018 and the same difficulty is faced on each occasion. There is abnormal delay in converting the plan posts to non-plan posts and thereby affecting the service conditions of the applicants. Respondents stated that there will be delay in taking the final decision because of the Finance Ministry. The same is a lame excuse inasmuch as the Government had already issued an order to convert the 'plan posts' to 'non-plan posts' and the same is continued for more than 3 years. The M/o Finance vide OM

dtd.19.12.2106 has already directed all the Ministries to complete in a time frame of 3 months from the date of issue of the OM i.e upto 19.3.2017, and the compliance report of the same is to be intimated to Dept. of Expenditure invariably along with details of posts and copy of orders issued in this regard. The applicants have already made representations and the Ministry has also sent the proposal but the same has been pending for more than 2 years. It cannot be said that such posts are temporary and as a result, there is threat of delay in payment of salary and the other financial benefits including the revision of pay etc. will be hanging over on the applicants. As per Annexure-R8, the respondents have again continued the posts only upto 1.3.2019 and again the same problem will arise and their salaries will be delayed. It is just and proper that a direction may be issued to the respondents, in particular the Dept. of Finance and DoPT to forthwith pass orders converting the 'plan posts' to 'non-plan posts' so that the applicants get the benefits of pay, revision of pay, leave and other benefits extendable to regular employees.

4. We have heard the Learned Counsel for both the parties and perused the materials placed on record in detail. The respondents have also filed additional reply statement reiterating the submission made in the reply, along with annexures upon which they relied. From the facts of the case it is clear that though the applicants have been regularised w.e.f. 05.01.2015, they have not been extended all the benefits of a regular government servant in view of the fact that their posts are considered to be plan posts which are supposed to exist only till such time the scheme under which the posts were created is approved for the relevant period. Where the Govt. of India considers the posts should be permanently required irrespective of the existence of a project or plan, then they are converted as non-plan posts and come under a permanent footing. While the question of

regularisation has reached its finality and the question of their regular salaries also having been ordered as per Annexure-R5 wherein a decision has been taken by the respondent headquarters to continue the payment of salary for the employees for whom the Court orders are in force until further orders, which was communicated in April 2018, the effect of this communication is that there will be no need for temporary extension of the continuation of posts until further orders, so that there is no handicap in paying salaries. Further, in continuation of the regularisation, the applicants had filed OAs.No.385-428/2015 & OA.No.520/2015 before this Tribunal praying for regularisation of their services from the date of their initial appointment or at least from the day after completion of 10 years of service from their initial appointment and to extend them all the service benefits protection on par with regular employees including arrears of pay etc. The OA was allowed and in Writ Petition No.4712/2016(S-CAT) & 5122-5164/2016 c/w 4714/2016(S-CAT), the Hon'ble High Court of Karnataka has issued an interim order allowing the first relief granted by this Tribunal which is as follows:

“(i) The pay and other allowances drawn by the applicants prior to their appointment on regular basis on 01.04.2015 shall be protected and they shall be allowed the pay being drawn by them immediately prior to their regularisation as their basic pay as on 01.04.2015. Their annual increment shall be determined accordingly.”

The other two reliefs given by this Tribunal relating to contribution for GPF, pension, the seniority, ACP and other service benefits etc., are stayed by the Hon'ble High Court of Karnataka and the final orders in this case are yet to be issued. As seen from Annexure-R6, it is apparent that the posts of the applicants have been approved for continuation at least till the year 2019-2020. Further as noted in Annexure-R7, there is a general exercise going on for conversion of temporary posts into permanent ones subject to the condition that these posts have functional

justification and are in existence for more than three years. In the case of the applicants, they have been continuing for more than 20 years i.e. with effect from 1996-1997 and the need for the posts has also continued since then resulting in their being continuously employed. Apparently there is full justification for the existence of the posts and therefore they will have to be considered for conversion into permanent posts which require only more than three years of continuance. It is also worth mentioning at this point that this issue was already dealt with in the Review Petition No.37/2017 in OA.No.935/2014 wherein the non-existence of any practical difference between the plan and non-plan posts has been elaborated. As noted by the respondents, a decision is in process but it is also apparent that it is taking considerably longer time than necessary. Even though the respondents have cited instances of the leave permitted, children education allowance given etc., it is clear that the applicants have not yet been given all the benefits as are given to the regular government servants. As the process is already on and there seems to be no impediment in converting the plan posts into non-plan posts, we, therefore, direct the respondents to complete the process of conversion within a period of three(3) months and extend all the consequential benefits to the applicants. The OA is allowed. No costs.

(C.V.SANKAR)
MEMBER (A)

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

/ps/

Annexures referred to by the applicants in OA.No.170/00304-00348/2018

Annexure A1: Copy of the order dtd.1.4.2013 in Oa.No.339/2011
Annexure A2: Copy of the order dtd.22.4.2014 in WP.No.57381/2013 and connected matters
Annexure A3: Copy of the OM dtd.19.12.2016
Annexure A4: Copy of OM dtd.27.3.2017
Annexure A5: Copy of the OM dtd.17.11.2017
Annexure A6: Copy of the representation of the 1st applicant dtd.3.4.2018
Annexure A7: Copy of the OM dtd.15.3.2018
Annexure A8: Copy of the order dtd.1.4.2015
Annexure A9: Copy of the order dtd.24.11.2017 in RA.37/2017

Annexures with reply statement:

Annexure-R1: Copy of the OM dtd.4.1.2015
Annexure-R2: Copy of the order dtd.1.4.2015
Annexure-R3: Copy of the interim order dtd.2.2.2016
Annexure-R4: Copy of the approval
Annexure-R5: Copy of the instruction dtd.23.4.2018
Annexure-R6: Copy of the communication dtd.26.4.2018
Annexure-R7: Copy of the instruction dtd.19.12.2016
Annexure-R8: Copy of the OM dtd.8.6.2018
Annexure-R9: Copy of the details of leave availed
Annexure-R10: Copy of the leave facilities

Annexures with rejoinders:

-NIL-

Annexures with additional reply:

Annexure-R1: Copy of the OM dtd.19.12.2016
Annexure-R2: Copy of the communication dtd.23.4.2018
Annexure-R3: Copy of the letter dtd.26.4.2018
